

VIDENIEKS
DEPOSITION

3-26-87

NON CONFIDENTIAL
VERSION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re

INSLAW, INC.,

Debtor.

Case No. 85-00070
(Chapter 11)

NON CONFIDENTIAL
VERSION

INSLAW, INC.,

Plaintiff,

Adversary Proceeding
No. 86-0069

v.

UNITED STATES OF AMERICA
AND THE UNITED STATES
DEPARTMENT OF JUSTICE,

Defendants.

~~IN CAMERA
UNDER SEAL
NOT PUBLIC~~

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Counts I, II and III of the Complaint)

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND

IN RE:)
INSLAW, INC.,) Case No. 85-00070
Debtor.) Chapter 11

The deposition of PETER VIDENIEKS, was
taken on Thursday, March 26, 1987, commencing at
4:03 p.m. at the office of Docter, Docter & Salus,
1325 G Street, N.W., Suite 700, Washington, D.C.,
before Debra L. Grothmann, Registered Professional
Reporter and Notary Public.

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A P P E A R A N C E S

ON BEHALF OF THE UNITED STATES OF AMERICA AND THE
DEPARTMENT OF JUSTICE:

DEAN COOPER, Esquire
Department of Justice, Civil Division
550 11th Street, N.W., Room 1212
Washington, D.C. 20004

ON BEHALF OF THE DEBTOR (INSLAW, INC.):

MICHAEL J. LIGHTFOOT, Esquire
O'Neill & Lysaght
2115 Main Street
Santa Monica, California 90405

(Index appears following the transcript.)

P R O C E E D I N G S

Whereupon --

PETER VIDENIEKS

a witness, called for examination, having been first
duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. LIGHTFOOT:

Q. Mr. Videnieks, my name is Michael Lightfoot.
I'm an attorney representing INSLAW, the debtor in
this bankruptcy proceeding, and Mr. Cooper, your
attorney, is in the room. This is a deposition that
is taking place pursuant to notice and subpoena.
You were subpoenaed, were you, to be here today at
four o'clock?

A. Right, right.

MR. COOPER: Let me just make an objection
for the record. Mr. Videnieks' deposition notice
will reflect the date on which it was served. My
recollection is it was on March 23, today being only
three days later. The United States and Department
of Justice objects to the unusually short notice for

1
2 the deposition notice. The local Rule 16 C requires
3 seven days' notice. As a result of the short notice
4 period, it's prejudiced to the government by
5 permitting no meaningful opportunity to prepare Mr.
6 Videnieks for his deposition.

7 BY MR. LIGHTFOOT:

8 Q. Mr. Videnieks, for whom are you presently
9 employed?

10 A. Department of Justice.

11 Q. What is your present position?

12 A. Contracting officer.

13 Q. Are you employed in a particular division
14 in the Justice Department?

15 A. Yes, Justice Management Division.

16 Q. And you work under -- which Assistant
17 Attorney General?

18 A. It is right now Harry Flickinger. He's
19 acting.

20 Q. And which division is that?

21 A. Justice Management Division.

22 Q. How long have you been so employed?

23 A. About six years.

1 Q. What are your present duties there?

2 A. To basically award and administer contracts.

3 Q. Now, calling your attention back to 1982.

4 Did you become familiar with a company by the name
5 of INSLAW, Incorporated?

6 A. Yes, sir.

7 Q. And tell us the circumstances under which
8 you became familiar with that entity.

9 A. It was my -- one of my first assignments at
10 the Department of Justice.

11 Q. Now, when you say it was one of your first
12 assignments, by that do you mean you were assigned
13 to administer the --

14 A. Oh, no. I was assigned to conduct a
15 competitive procurement which was the result of a
16 pilot project under which I believe INSLAW and two
17 other contractors were pilot contractors.

18 Q. All right. And you worked with other
19 individuals in the Justice Management Division at
20 that time with regard to the INSLAW contract?

21 A. Yes. Well, shall we refer to it as INSLAW
22 contract or the procurement which resulted into a
23

1
2 contract to INSLAW?

3 Q. All right. Well, whatever you want to call
4 it, whichever is more appropriate.

5 A. On the procurement.

6 Q. On the procurement. So you worked on the
7 procurement of that contract?

8 A. Yes.

9 Q. And when did it become a contract with the
10 Justice Department?

11 A. I believe the award was in February of '82,
12 to the best of my recollection.

13 Q. And after the contract was awarded, did you
14 continue to work on INSLAW?

15 A. I was charged with administering that
16 contract.

17 Q. And what did those duties entail?

18 A. To monitor contract performance from a
19 procurement standpoint to -- basically that's it.

20 Q. If you could be a little more specific. I
21 don't understand what you mean by that. In layman's
22 language, what does that mean?

23 A. To monitor the contract means basically to

1
2 issue any necessary modifications, send any required
3 correspondence.

4 Q. And did you report to a particular
5 individual?

6 A. Yes.

7 Q. Who was that?

8 A. I think initially it was Patricia Rudd,
9 R U D D. Later on it became -- the individual was
10 Kamal Rahal.

11 Q. How do you spell that?

12 A. K A M A L, R H A L (sic).

13 Q. R A H L?

14 A. R H A L. And then subsequently Paul Turnau
15 was in the picture. There was a -- three of them,
16 T U R N A U.

17 Q. And did all of these individuals work in
18 the Justice Management Division?

19 A. Yes.

20 Q. Now, as you worked in the Justice
21 Management Division on the INSLAW contract, did you
22 have regular dealings with one or more individuals
23 at INSLAW?

1
2 A. Yes.

3 Q. And let's just start in '83. Who did you
4 have regular contacts with at INSLAW in 1983?

5 A. My memory is not good enough to where I can
6 partition my contacts off by year. I remember --
7 that was the initial -- in '83, I may have -- Kelley,
8 Jim Kelley.

9 Q. And what was his position at INSLAW at that
10 time?

11 A. He was general counsel but acted as
12 contract administrator with -- I can't recall the
13 gentleman's name.

14 Q. Okay.

15 A. John Gizarelli was program manager.

16 Q. And did you continue to work with those two
17 individuals at INSLAW in 1984?

18 A. At one point, whether it was '84 -- at some
19 later point, Kelley left INSLAW and his job was
20 taken over by Roberta McLennin.

21 Q. And did you then work with her?

22 A. Yes.

23 Q. And did you continue to work with Mr.

1
2 Gizarelli in 1984?

3 A. Again I don't know which year it was.
4 Gizarelli at some later time, it may have been '85,
5 left INSLAW and his functions were taken over by
6 several individuals in succession.

7 Q. I see. Now, at some point, did you -- were
8 you detailed away from the Justice Management
9 Division to the executive office of U.S. Attorneys?

10 A. I was always on the Justice Management
11 Division's payroll, always reported to individuals --
12 one of the three individuals which I named.

13 Q. Well, physically did your office move to
14 the offices of the executive office of U.S.
15 Attorneys?

16 A. No. At one point I had two offices.

17 Q. And where were they located?

18 A. One with the executive office of U.S.
19 Attorneys, another one with the procurement staff.

20 Q. When did that happen that you first had
21 those two offices?

22 A. I can't recall specifically, but it was
23 probably in '84, that's about the best I can recall.

1 Q. And how long did that arrangement last?

2 A. I would guess more than a year.

3 Q. Can you give me an approximate date --
4 well, at some point in '85 -- I gather it was a
5 three-year contract?
6

7 A. Yes.

8 Q. I believe sometime in 1985, I believe March
9 17, 1985, the contract terminated, ended?

10 A. The contract -- I believe that's true.

11 Q. And did you maintain these two offices
12 until the contract expired in March of 1985?

13 A. No.

14 Q. When did you cease using two offices?

15 A. I can't recall.

16 Q. It was sometime before March of '85, though?

17 A. Yes.

18 Q. And when you ceased using those two offices,
19 did you just then return to your one office at
20 Justice Management?

21 A. Yes.

22 Q. And you quit the offices in the executive
23 office of U.S. Attorneys?

1
2 A. Yes.

3 Q. Let me ask you this, Mr. Videnieks, and
4 this may be a little difficult. Do you recall that
5 you kept those two offices until sometime in 1985 or
6 would it have been 1984 when you went back to
7 Justice Management Division?

8 A. I cannot recall.

9 Q. When you had an office, one of the two
10 offices at the executive office of U.S. Attorneys,
11 did you report to anybody at the executive office --
12 and I'm just going to call it executive offices from
13 now on?

14 A. EOUSA, whatever. No.

15 Q. Did you work with anyone in particular when
16 you had your office up there?

17 A. I had my own individual office.

18 Q. All right. But is it fair to say that you
19 now had this second office because it was important
20 that you have dealings with the executive office?

21 A. No.

22 Q. Why did you -- why did you maintain two
23 offices, then?

1
2 A. Geographic reasons. The EOUSA office is on
3 Connecticut, upper, Northwest. We are downtown.

4 Q. Where is the Justice Management Division?

5 A. The main justice is on 10th and
6 Constitution, N.W., so it's a lengthy subway ride,
7 and basically it was a convenience measure.

8 Q. Because it was more convenient for you to
9 work at EOUSA?

10 A. Definitely there were times when it was,
11 sure.

12 Q. And why was it more convenient for you to
13 work at EOUSA?

14 A. Approximately to the technical --
15 Contracting Officers Technical Representative, the
16 COTR.

17 Q. COTR. And who was the COTR during this
18 period of time that you dealt with?

19 A. Michael Snyder.

20 Q. Would it be fair to say, then, that you had
21 regular business with Mr. Snyder during the time
22 that you administered the INSLAW contract?

23 A. Yes.

1
2 Q. What was Mr. Snyder's title at the
3 executive office?

4 A. I believe his title was, to the best of my
5 recollection, attorney advisor and he functioned as
6 the -- what we call a COTR.

7 Q. And did he report to Mr. Brewer?

8 A. I believe -- when I say I believe, I'm
9 trying to remember, it was Jack Rugh.

10 Q. Jack Rugh. And did Mr. Rugh --

11 A. And there was a lady, lady assistant
12 manager over there for a short period of time, Karen
13 Krug, K R U G. He also reported to a Karen Krug.

14 Q. And did Mr. Snyder report to C. Madison
15 Brewer?

16 A. Ultimately, yes.

17 Q. And Mr. Brewer, in turn, reported to Tyson?

18 A. I believe there's someone in there.

19 Q. During that period of time Tyson was the
20 director of the executive office, wasn't he?

21 A. Right.

22 Q. Did you have contact during the period of
23 time --

1
2 A. Excuse me.

3 Q. Did you have daily contact with Mr. Snyder
4 with regard to this contract during the period of
5 time that you had an office up there?

6 A. Not every day. But in general, yes.

7 (Discussion off the record.)

8 BY MR. LIGHTFOOT:

9 Q. Did you have contact with Mr. Rugh on a
10 regular basis while you were -- your office was up
11 there?

12 A. Yes.

13 Q. More so than with Mr. Snyder?

14 A. No.

15 Q. And for the period of time that you had
16 these two offices, did you spend more time at the
17 executive offices than you did at Justice
18 Administration -- Justice Management Division?

19 A. At one time, yes. But it varied. I had
20 other assignments, also, so it was depending upon --

21 Q. What was the longest period of time that
22 you would go to the offices -- on a regular basis to
23 the executive office rather than Justice Management?

1
2 A. Excuse me.

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4 with regard to this contract during the period of
5 time that you had an office up there?

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10 regular basis while you were -- your office was up
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16 these two offices, did you spend more time at the
17 executive offices than you did at Justice
18 Administration -- Justice Management Division?

19 A. At one time, yes. But it varied. I had
20 other assignments, also, so it was depending upon --

21 Q. What was the longest period of time that
22 you would go to the offices -- on a regular basis to
23 the executive office rather than Justice Management?

1
2 A. Day and a half.

3 Q. Day and a half?

4 A. I was -- most of the time I reported in in
5 the morning at Justice Management Division to check
6 my other duties, and then I would go over to the
7 EOUSA.

8 Q. During the three-year time period that the
9 contract was in existence, the INSLAW contract, how
10 much of your day did that take up on a regular basis?

11 A. I can't recall. It was a -- I would say it
12 was my largest assignment, but frequently there were
13 urgent other procurements which took more time,
14 especially toward the later years, and administering
15 of the INSLAW contract became secondary, significant --
16 almost secondary.

17 Q. During this three-year period, was that
18 your major assignment, however, the INSLAW contract?

19 A. Yes.

20 Q. Okay. Now, let me call your attention, if
21 I could, Mr. Videnieks, to -- we can mark this as
22 Videnieks Number 1.

23 (Videnieks Deposition Exhibit Number 1 was

marked for identification.)

BY MR. LIGHTFOOT:

Q. And I ask that you take a look at that.

A. I'm going to ask you to look at this letter, not necessarily read all of its contents. All I'm trying to do is ask you whether or not you received that letter? It's --

A. I have my wrong glasses with me, but I received this letter.

Q. You did receive it?

A. As far as I can tell without reading the whole thing.

Q. And I'm not going to ask you anything about its contents but take your time to make sure that that is a letter received from the law firm of Pettit and Martin with respect to the INSLAW contract.

A. It appears to be a letter that I received.

Q. And do you recall what you did -- did you forward this letter on to someone else after you received it?

A. I believe I or someone else in procurement

answered it after discussing it.

Q. Do you recall with whom you discussed this letter?

A. I believe I discussed it with Mr. Rahal.

Q. If you'll notice on the last page of the letter, there's a carbon copy to Mr. Rahal?

A. I'm pretty sure it was also Bill Snider.

Q. And that's different than Michael Snyder?

A. Right, he was an attorney. He was the Administrative Counsel, DOJ.

Q. And do you recall discussing with anybody in the executive office of U.S. Attorneys?

A. Yes, I would have discussed it with Mike Snyder and Jack Rugh and possibly Brick Brewer.

Q. Okay. The next document, Mr. Videnieks, is a -- is one that appears to have your name on it and it's dated February 17, 1983, and we'll mark this as Videnieks Number 2. And this is dated seven days after the letter which is marked as Videnieks Number 1.

(Videnieks Deposition Exhibits Numbers 2-4 were marked for identification.)

BY MR. LIGHTFOOT:

Q. So that we're clear now, Mr. Videnieks -- they're all dated February 17. 2 is a memo from you to W. J. Snider, 3 is one from you to C. M. Brewer, and 4 is from you to Guy K. Zimmerman, and my sole question to each of those, 2, 3 and 4, is whether or not you're familiar with those and that you did, in fact, author them and send them on to the person indicated?

A. Yes.

Q. With respect to 2, is that true?

A. Yes.

Q. With respect to 3, is that true?

A. Yes.

Q. And with respect to 4, is that true?

A. Yes.

Q. Mr. Videnieks, I now want to call your attention to the month of February of 1985. The record indicates that a Chapter 11 bankruptcy petition was filed by INSLAW, Incorporated, on February 7, 1985. Have you at some time become familiar with the fact that such a petition had been

1
2 filed in bankruptcy court here in Washington, D.C.,
3 actually in Alexandria?

4 A. Yes. Management Division.

5 Q. When did you first become aware of the fact
6 that INSLAW had filed such a bankruptcy petition?

7 A. Around that time. I can't tell
8 specifically when it was, I really can't.

9 Q. Do you recall the circumstances under which
10 you first learned that the bankruptcy petition had
11 been filed?

12 A. I cannot recall how I learned.

13 Q. Do you recall whether or not you were
14 working in your office at the EOUSA or whether or
15 not you were back at Justice Management Division
16 when you first learned that?

17 A. I really cannot recall that. I would guess
18 now that I was probably back -- at that time was
19 definitely spending I think all my time at Justice
20 Management Division.

21 Q. All right. So that would it be your best
22 estimate, although you can't be sure, that you would
23 have heard about it for the first time back at

Justice Management Division?

A. It would be my guess that I heard it back at the Justice Management Division.

Q. And this was a significant fact to you, was it not, since you were the individual in the Justice Department who administered the contract?

A. Yes.

Q. Do you recall from whom you heard this?

A. No, I don't.

Q. All right. Did you -- did you do anything yourself or cause anything to be done after you first learned that the company had filed for bankruptcy?

A. I think what happened was that all of the responsible personnel at Justice met to discuss what the impact of this event was and what steps we should take to protect the Department of Justice or government's interest.

Q. I see. And do you recall going to such a meeting?

A. I recall meeting or telephone, I don't recall any specific meetings. I remember meetings

1
2 and/or telephone conversations with several
3 individuals.

4 Q. And do you recall the -- who was present at
5 the first meeting that took place?

6 A. See, I don't recall specific meetings. I
7 recall contacting people in audit and procurement
8 and EOUSA.

9 Q. Who did you contact in audit?

10 A. It would have been either Guy Zimmerman or
11 Dominic Zazzaro.

12 Q. And do you recall what the substance of
13 that contact was?

14 A. Just to discuss the impact, to discuss the
15 impact. It was discuss the impact of -- of what was
16 happening to the PROMIS program and to conclude what
17 should be done under the contract.

18 Q. And did you and Mr. Zimmerman came to some
19 conclusion with regard to any problem that he might
20 have?

21 A. I don't recall.

22 MR. COOPER: Objection to that last
23 question. Mr. Videnieks did not testify that he

1
2 spoke to Mr. Zimmerman. He stated he might have
3 spoken to Mr. Zimmerman or Mr. Zazzaro.

4 BY MR. LIGHTFOOT:

5 Q. After you spoke to either one of those two
6 individuals, did you and the other person to whom
7 you talked come to some resolution as to what the
8 problem might be and how it might be solved, if
9 there was any?

10 A. No. To the best of my recollection, there
11 was a change of meetings, telephone conversations,
12 discussions, over a period of time dealing with that
13 subject.

14 Q. And in procurement, who did you deal with
15 at that time with respect to INSLAW on this matter?

16 A. I believe at that time my supervisor was
17 Paul Turnau and his supervisor, Kamal Rahal.

18 Q. Are both audit and procurement within the
19 Justice Management Division?

20 A. Yes.

21 Q. And I believe you also indicated that you
22 had a contact with one more persons at the executive
23 office.

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A. I probably spoke with Mike Snyder, Jack Rugh and Brick Brewer.

Q. Do you have a recollection of having spoken to each of those three individuals with respect to INSLAW after the bankruptcy petition was filed?

MR. COOPER: Excuse me, I'm sorry to interfere, but do you mean immediately after the bankruptcy petition was filed? I mean, your question could mean anything, could have meant yesterday.

MR. LIGHTFOOT: No, I'm talking about the period following the bankruptcy filing.

MR. COOPER: Thank you.

THE WITNESS: I don't recall specific instances, but I recall in general that I spoke with all concerned individuals, the ones at OMISS.

BY MR. LIGHTFOOT:

Q. Did anybody at the executive office instruct you to take any steps after you talked to them about the fact of the bankruptcy filing?

A. I don't recall any instructions. You see, they -- the way that the organizations are set up,

1
2 they don't instruct. In other words, EOUSA and
3 Justice Management Divisions are two equal
4 organizations in the Justice Department.

5 Q. I understand. But did the EOUSA, did
6 anybody in that office ask you to go out and do
7 anything, for instance, something about gather any
8 information to bring back to them about this matter?

9 A. No.

10 Q. Did you, at some point, have a contact
11 either by telephone or in person with the trust --
12 the U.S. Trustee whose responsibility it was to
13 administer this bankruptcy filing?

14 A. Please clarify your question as to who you
15 mean by the U.S. Trustee.

16 Q. Well, I'm talking about the office itself,
17 the office of the U.S. Trustee that was
18 administering the bankruptcy petition that was filed
19 by INSLAW on February the 7th, 1985?

20 A. I spoke with a man named -- I believe his
21 name was Chuck Miller on two or three occasions.

22 Q. Now, what were the circumstances of your
23 first calling Mr. Miller? Why did you do that?

1

2

A. I don't recall the specific event.

3

Q. All right. I don't recall --

4

5

A. Basically I would -- I probably called him to ask for information about the case.

6

Q. And did anybody ask you to do that?

7

8

A. I don't think so. I think I did that on my own. I would have done that on my own.

9

10

Q. Do you remember the first telephone conversation you had with Mr. Miller?

11

12

A. Not specifically, that there was one -- that there were two or three conversations.

13

14

15

16

Q. This is -- I gather you made notes of your telephone conversations or telephone conversation with Mr. Miller, one conversation at least, is that right, Mr. Videnieks?

17

A. I believe I did.

18

19

20

21

22

23

Q. I would like that marked as 5 and ask you if you recognize that, Mr. Videnieks, as the -- it appears to be in darker ink on the copy, if you recognize the conversation, the Chuck Miller notes of a phone call of February 20, 1985?

(Videnieks Deposition Exhibit Number 5 was

marked for identification.)

THE WITNESS: Those are my notes about that telephone call.

BY MR. LIGHTFOOT:

Q. Do you recall making those notes in your own hand at the time of the telephone conversation?

A. Yes, or shortly thereafter.

Q. Now, I'm going to direct your attention to the first two lines of your notes, top 20 unsecured creditors met on Monday, February 25, 1985. We can't go.

Before that conversation, had you -- were you familiar yourself with bankruptcy in general and bankruptcy proceedings?

A. No.

Q. Were you aware that there was such a thing as an unsecured creditors' meeting --

A. No.

Q. Where did you learn about an unsecured creditors' meeting?

A. I can't recall but probably from Chuck Miller.

1

2

Q. During that phone call?

3

A. Yes.

4

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6

7

Q. And do you have a specific recollection of the gist of the information you got in this first two lines, that there was a meeting for a specific date and you couldn't go?

8

9

A. I believe what I meant by we can't go, the underlined portion of that note, is we, DOJ.

10

11

12

13

14

Q. Do you recall before you made this conversation that someone in the department asked for you to determine whether or not it was possible for a department representative to go to the first unsecured creditors' meeting?

15

A. Please repeat that.

16

17

18

19

20

21

Q. Maybe that was a little unwieldy. Do you remember somebody -- before this conversation with Chuck Miller, do you remember whether anyone in the department asked you to make inquiry to find out whether a department representative could go to an unsecured creditors' meeting?

22

A. I don't recall that.

23

Q. You have underlined, we can't, and then

1
2 there's an exclamation mark after go leading a
3 reader to believe that there was something
4 significant about that. Was there -- to you was
5 there something significant about that?

6 A. If I recall correctly, it was probably -- I
7 felt that -- it unusual that we can't go to that
8 proceeding.

9 Q. Did he explain why you couldn't go?

10 A. He may have. He may have. I don't recall
11 specifically.

12 Q. Did he indicate to you that you were not
13 among the top 20 unsecured creditors?

14 A. I don't recall specifically now. If that's
15 what I said in my notes, then he must have said so.

16 Q. But as you sit here today, you have no
17 recollection of anyone having asked you to determine
18 whether the department could go to such a meeting?

19 A. No, I don't.

20 Q. And then the next three lines, if you'll
21 take a look at that, Mr. Videnieks, indicate that
22 you were advised when the -- a meeting of secured
23 creditors --

MR. COOPER: I think it says general.

BY MR. LIGHTFOOT:

Q. General rather, meeting was to take place?

A. Which three lines?

Q. The next paragraph.

MR. COOPER: The next paragraph.

THE WITNESS: It appears he told me when this meeting of creditors will take place and where.

BY MR. LIGHTFOOT:

Q. And do you recall whether you had been instructed by somebody or asked by someone inside the department to find out when you could go to a meeting as a department -- as a representative of the department to find out what was going on in this matter?

A. No.

Q. And then the next paragraph, Mr. Videnieks -- and I'll just read this and correct me if I don't read your writing correctly -- Miller said just because we're not listed, we're not at a disadvantage, he'll list us with INSLAW and I can't read the next name.

1
2 A. If INSLAW hasn't.

3 Q. Hasn't. All right. And then four dots,
4 generally confusing?

5 A. Generally confusing, okay. I believe at
6 this point that that was my comment on the
7 procedures of the bankruptcy case as explained to me
8 by Miller.

9 Q. And were you at this time explaining to Mr.
10 Miller that it was important that the Justice
11 Department have some opportunity to attend these
12 meetings so that you could preserve whatever rights
13 the department had in its -- in the obligation owed
14 by INSLAW?

15 A. Yes, I was concerned with our rights,
16 protecting the interests of the government.

17 Q. And had anyone particular in EOUSA asked
18 you to make that known to the U.S. Trustee office?

19 A. No.

20 Q. Had Mr. Brewer, in particular, asked you to
21 do that?

22 A. No, I believe I acted on my own basically.
23 I think it was at my own initiative.

1
2 Q. Mr. Videnieks, before the bankruptcy
3 petition itself was filed on February the 7th and
4 this conversation took place almost two weeks later,
5 13 days later on the 20th of February, do you recall
6 having meetings at which Mr. Brewer was present
7 between those two dates?

8 A. I do not recall. That was such a long time
9 ago. I really cannot remember specific meetings.

10 Q. Do you recall, though, attending meetings
11 after the bankruptcy petition was filed in which Mr.
12 Brewer was present?

13 A. I don't recall. That does not mean that
14 there were no such meetings. There may have been
15 meetings and/or telephone conversations.

16 Q. Do you ever recall Mr. Brewer indicating to
17 you in words or substance that he was quite
18 concerned because INSLAW had filed for bankruptcy?

19 A. As did other individuals.

20 Q. But Mr. Brewer did?

21 A. Yes, he was -- I imagine. I don't recall
22 any specifics. I imagine since everyone that I can
23 remember were concerned about this event, that he

1
2 also was concerned about it and I imagine at that
3 time we did speak about it.

4 Q. Well, you imagine that because at different
5 times, Mr. Brewer expressed to you his concern about
6 that subject, did he not?

7 A. Please rephrase that.

8 Q. Well, you understood that Mr. Brewer was
9 concerned because you heard him express such concern
10 in your presence, did he not?

11 A. It's a confusing question. Can you please
12 restate that in the form of a question.

13 Q. Let me just back up. During the time that
14 you administered this contract, from time to time
15 you would have discussions with Mr. Brewer either
16 just with him alone or with others with respect to
17 the INSLAW contract, did you not?

18 A. I don't recall -- well, I imagine I may
19 have talked with Brewer alone, but that was not the
20 normal situation.

21 Q. And then from time to time, you talked to
22 him in meetings where others were present where the
23 subject of the INSLAW contract came up?

1
2 A. Yes, I did talk to him.

3 Q. And these meetings occurred both before and
4 after the petition for bankruptcy was filed, is that
5 right?

6 A. Yes.

7 Q. All right.

8 A. But then again, let me say -- you keep
9 coming back to these meetings, and let me repeat
10 what I said, okay? There were telephone
11 conversations and meetings, series of them. I
12 cannot recall specifically any meetings or formal
13 meetings as such.

14 Q. Now, the next paragraph and the next four
15 lines in this telephone memo, and I'm going to read
16 this, Mr. Videnieks, and if you would just read
17 along with me, it might speed things up.

18 I told him that we'll counterclaim for
19 computer center costs in the amount of 500 to 600K,
20 which I gather is thousand, is that right?

21 A. K is a thousand, yes.

22 Q. And that INSLAW -- would you tell me what
23 the next word is?

PETTIT & MARTIN

Mr. Peter Videnieks
February 10, 1983
Page Four

January 28, 1983 to which this letter is a response. Mr. Videnieks did not indicate to Mr. Hannon at the December 3 meeting the nature of any alleged violation by INSLAW of the advance payments article of the contract, or advise that any action need be taken by INSLAW to rectify any alleged violation.

During the period of performance under the contract, the Department has had available to it and/or has been provided information regarding the financial status and prospects of INSLAW. It does appear, however, unfortunately, that some within the Department may be laboring under a misimpression regarding the financial status and business prospects of INSLAW, and thus became unduly concerned regarding the alleged "risk" to which the Department is exposed because of the increase in INSLAW's line of credit.

The advance payments presently are approximately \$280,000 per month. As noted by Mr. Whitely at the February 4 meeting, this amount generally reflects the value of services provided by INSLAW to the Department each month. Hence, the payments effectively can be viewed either as a 100% "advance progress payment" or, more accurately, as advance payments provided on a month-by-month basis only. The important point is that this is not a situation where the advance payments represent a massive commitment of United States Government funds, over and above the contractor's actual level of progress under the contract; rather, consistent with the most conservative view of the advance payments provisions of the Federal Procurement Regulations, the modest advance payments here accurately reflect the contractor's progress and expose the Government to extremely slight risk. They are essential to assist in financing a small but viable contractor which is providing a vitally needed service to the Department of Justice.

Discontinuance of Advance Payments is not in the Best Interests of the Department of Justice or INSLAW

As indicated in the Summary of Facts set forth above, there are some questions extant regarding the circumstances which led the contracting parties to the present discussion regarding advance payments. These questions appear to reflect an unfortunate lack of communication by both parties and not an intentional effort by either party to conceal any material

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A. Still, I believe it's still owes advance payments of 80K.

Q. Now, had you learned from someone in the Department of Justice that the department was going to counterclaim against INSLAW in that amount?

A. I can't recall. I must have.

Q. That would not have been a matter that you would have decided on your own, would it, that a counterclaim would be filed?

A. I would not be doing it myself. That would be done by attorneys.

Q. But as you sit here, you can't recall who told you that?

A. I can't recall.

Q. And the next paragraph is, Miller said that no current list of creditors is -- I'm sorry. The current list of creditors is temporary and that a final list will be filed later, is that right?

A. Right.

Q. And then there's a question mark?

A. Yes.

Q. What does the question mark mean?

1
2 A. I believe it relates back to the comment at
3 the end of the third paragraph which is generally
4 confusing.

5 Q. You find that confusing. What is confusing
6 about that?

7 A. My lack of familiarity with the process.

8 Q. You just didn't understand it?

9 A. I didn't understand it.

10 Q. You couldn't understand why you couldn't
11 get a list of the creditors of INSLAW at that time?

12 A. Why we couldn't get a list?

13 Q. Yes.

14 A. I don't think that's the gist of this.

15 Q. Well, it's temporary. Well, did you
16 understand from Miller that that was not a complete
17 list of creditors?

18 A. I can't recall in such detail this
19 conversation but it may relate to the paragraph
20 above that Justice is not on the list.

21 Q. Well, were you -- had you asked Mr. Miller
22 during that conversation for a current list of
23 creditors?

1
2 A. I did not ask him -- to the best of my
3 recollection, I did not ask Miller for a list of
4 creditors. I believe that I was -- my purpose of
5 calling Miller was to see whether we were on it.

6 Q. All right. Did you have any interest in
7 obtaining a list of the other creditors of INSLAW at
8 that time?

9 A. No, and I don't think I ever got it after
10 that.

11 (Discussion off the record.)

12 BY MR. LIGHTFOOT:

13 Q. Mr. Videnieks, with respect to the same
14 document which has been marked as Videnieks Number 5,
15 I'm going to turn to the next entry on your notes
16 which appears to be notes of a conversation on the
17 same date. I appreciate that this one is much more
18 difficult to read, but I'm going to try to go
19 through it with you, if I can.

20 The first notations appear to be the
21 initials J.D. Would that be Jack Rugh?

22 A. Yes.

23 Q. And it indicates he called re: our computer?

1
2 A. Yes.

3 Q. Is that right?

4 A. Right.

5 Q. What does that mean?

6 A. We, DOJ, had furnished INSLAW a computer
7 for performance of the contract, which was installed
8 at INSLAW.

9 Q. I see. What does it mean when he says he
10 called re: our computer? Did he express something
11 with respect to the Justice Department computer that
12 was located at INSLAW?

13 A. I can't recall.

14 Q. You have no recollection whether or not Mr.
15 Rugh said anything specifically about that computer
16 that was located at INSLAW?

17 A. I don't recall whether he said anything
18 specific or general about it.

19 Q. Well, is it fair to say that there was a
20 concern in the department among those who had
21 anything to do with the INSLAW contract at that time,
22 that you didn't want to lose the computer that was
23 located on INSLAW's premises?

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A. I think there was concern that the computer not that it would be lost, that it would not be accessible as a result of bankruptcy proceedings.

Q. And did you have -- I'm sorry, I didn't mean to interrupt you.

A. That was basically it.

Q. And do you remember conversations with other people at Justice at this time with regard to what steps could be taken to get the computer back or whatever way you can to preserve your interest in the computer?

A. There were conversations about that.

Q. And tell me about those conversations, Mr. Videnieks? First, who was present when these conversations took place?

A. To the best of my recollection, the conversations probably were over the telephone.

Q. And who did you have the conversations with?

A. I would guess that they were with Jack Rugh and Mike Snyder.

Q. Okay. And do you recall what the substance of those conversations was?

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A. In general about that government furnished computer system located at INSLAW.

Q. Well, did they indicate that -- any person in these conversations indicate what a desired step would be to be taken in assuring that the Justice Department didn't lose its interest in that computer?

A. I don't recall any specific desired steps to be taken. I don't recall them.

Q. Do you recall whether anybody asked whether or not you could make inquiry of the bankruptcy court or the U.S. Trustee Office to determine whether or not you could take the machine back?

A. I did not make such inquiries. No one asked me to make such inquiries. I don't recall the contracting officer being asked to deal with the court.

Q. All right. Now, the next sentence after the one I just read, the first two words appear to be Brick talked and then on the next line it says, to Stanton, and then the next one is even harder to read, but the numbers 11 and then on the next line the number 7 appears. Do you see that?

1

2 A. Do you have a clearer copy?

3 Q. I don't. I don't. These are -- this is
4 what we got and that's the best that I can do.

5 Well, here's one. Let me make this suggestion, and
6 you tell me whether you agree or not agree, that
7 your words read, no way 11, will be 7.

8 A. On this copy it is clearer and that's what
9 it appears to say.

10 Q. All right. Now, today do you have an
11 understanding of what those numbers mean?

12 A. I'm very generally familiar with what 11 is.

13 Q. What is 11?

14 A. I think it deals with -- well, anyway I'm
15 generally familiar with it. A 7, I don't know what
16 it means.

17 Q. What is your understanding of what an 11 is?

18 A. I've learned since -- since I understand
19 that now INSLAW is operating under 11.

20 Q. Chapter 11?

21 A. Yes, Chapter 11 allows one to -- an
22 organization to continue performance.

23 Q. Do you know what -- today what a 7 is?

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A. No.

3

Q. Have you ever known what a 7 is?

4

A. I don't think I have, no.

5

Q. Do you have an understanding of 7, in terms of in a bankruptcy, that 7 is not as good as 11. It sounds like a crap game.

8

A. It really does. I would guess 11 is better because it allows one to operate and I don't know what 7 does. I really don't know what 7 does.

11

Q. Did you ever hear that if you went into Chapter 7, then you would become liquidated, you would go out of business? You never understood that?

14

A. It may have been said to me, but it never registered. I don't know.

16

Q. Now, can I understand, Mr. Videnieks, that what this means -- let me just ask you this. The three lines, if you would look at that -- at this notation, the three lines that follow the date 2-20-85 and then the initials J.R., are -- does that full three-line entry all refer to the same phone call?

23

A. I would guess it refers to my phone call

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2 with -- my telephone conversation, I don't know who
3 called who, with Jack Rugh on that date.

4 Q. Well, wouldn't it appear, in fact, that he
5 called you because your first indication is that
6 Jack Rugh called?

7 A. Yes, then he called.

8 Q. He called you?

9 A. Yes.

10 Q. He called concerning the computer you had
11 at INSLAW, is that right?

12 A. That's what it says here.

13 Q. And then he indicated to you, Jack Rugh,
14 that Brick -- and that refers to Brick Brewer, does
15 it?

16 A. Yes.

17 Q. That he had talked to Tom Stanton.

18 A. I don't know Mr. Stanton's first name.

19 Q. Do you know who Mr. Stanton is?

20 A. Now I know. I imagine I knew then, too,
21 but I've never met the gentleman.

22 Q. He's the executive officer of the U.S.
23 Trustee, the director of that office?

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A. Yes.

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Q. And that Mr. Stanton had said, no way 11, it will be a 7, is that right?

5

6

A. I don't know -- I would say that could have well been -- that could have been Jack Rugh's words.

7

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Q. That's what Jack was telling you, but don't your notes indicate that Jack is telling you what Brick was told by Stanton?

10

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A. I don't recall specifically but if you ask me for what I generally can remember, this -- I would attribute that to Jack.

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Q. Well, it's your notes so that's why I'm asking you. On reading those notes, is it a fair interpretation of your notes that you wrote down that Jack called you and he relayed information to you, one of the things he told you was that Brick had told him, Jack, that Brick had talked to Stanton, and that Stanton had told Brick no way 11, it will be a 7? Is that a fair interpretation of your notes?

A. I don't think so.

Q. Okay. You tell me what a fair interpretation of those notes is, Mr. Videnieks.

1
2 A. I think this was a long time ago. I don't
3 recall the specifics of these notes. But at this
4 point in time, okay, it's two and a half years later
5 looking at those notes, those were probably
6 attributable to Jack Rugh, and I suggest that maybe
7 he would be the individual who we ask that.

8 Q. Well, you put these words -- no way 11, it
9 will be 7. Do those notes indicate that that's what
10 Jack Rugh was saying or that that's what Stanton
11 told Brewer who in turn told --

12 MR. COOPER: Objection, counsel. The notes
13 speak for themselves. If you want to ask Mr.
14 Videnieks whether he recalls if Mr. Rugh said this,
15 Stanton said that or if his recollection is that Mr.
16 Rugh said that, that's an appropriate request. But
17 you've now asked this question three times.

18 I think that the crux of his notes is
19 something that he says he can only remember in
20 hindsight. Ask him facts. Don't try and argue
21 about the construction of a document that he says he
22 doesn't recall specifically.

23 BY MR. LIGHTFOOT:

1
2 Q. Mr. Videnieks, when you wrote the words no
3 way 11, it will be a 7 -- when you wrote that down,
4 whose words were they that you were writing down on
5 that piece of paper?

6 A. It was two and a half years ago. The
7 entire three lines there refer to my conversation
8 with Jack Rugh.

9 Q. I understand that. But the question, Mr.
10 Videnieks, is whose words were they in your mind
11 when you wrote that down?

12 A. In my mind right now -- again I'm saying my
13 recollection is not good, something that far back.
14 I would guess that those are Jack's thoughts on the
15 matter.

16 Q. And then --

17 A. But I would suggest you ask him since he
18 may remember better.

19 Q. All right. Well, so that I understand this,
20 then, your best recall today is that those words, no
21 way 11, it will be a 7, are the thoughts of Jack
22 Rugh --

23 A. Yes, yes.

1
2 Q. -- and not Mr. Stanton?

3 A. To the best of my recollection, that's what
4 I would have to say, yes.

5 Q. And then the last phrase is, appears to be,
6 need home for a computer, is that right?

7 A. Again I would say that's Jack saying --
8 expressing concern about the PROMIS program, that we
9 need a home for the government-furnished computer in
10 the event that for some reason or another the doors --
11 we were denied access.

12 Q. And did you make efforts after this phone
13 call to find places that could physically house the
14 computer that at that time was located at INSLAW?

15 A. I personally did not take such steps, but I
16 think, if I remember correctly, that Jack Rugh and
17 Mike Snyder did make telephone calls and try to --
18 dealt with the matter, but the way we operated under
19 the contract, they would have taken up those
20 concepts.

21 Q. And do you know whether or not a home was
22 eventually found for that particular computer?

23 A. It stayed where it was.

1
2 Q. Mr. Videnieks, did you ever hear from the
3 date that the bankruptcy was filed on February 7,
4 1985, until today that anyone in the Department of
5 Justice had an interest in assuring that INSLAW
6 would be liquidated?

7 A. Number one, I don't understand what the
8 term liquidate is, and two, I don't remember the
9 conversation.

10 Q. Did you ever hear that anyone in the
11 Department had an interest to assure INSLAW would go
12 out of business -- it would go out of business?

13 A. Rephrase that, please.

14 Q. Did you ever hear from any others, say or
15 in writing or hear from any source from the date
16 that the bankruptcy was filed until today that
17 anyone at all who worked for the Department of
18 Justice from the Attorney General on down had an
19 interest in making sure that INSLAW went out of
20 business?

21 A. No.

22 Q. You never heard that?

23 A. I don't recall that at all, no.

1
2 Q. Now, I have a document that goes back, and
3 these are again your notes, Mr. Videnieks -- that my
4 understanding is go back to the year 1983. As not
5 to mislead you, I tell you this in advance. This
6 would be 6.

7 (Videnieks Deposition Exhibit Number 6 was
8 marked for identification.)

9 BY MR. LIGHTFOOT:

10 Q. Let me just say, too, Mr. Videnieks, that
11 there appear to be the underlining of words at
12 approximately six locations in that document. Those
13 are not your underlinings. Those are our
14 underlining that are copied, all right? The
15 original didn't have those.

16 So as not to waste time, I'm particularly
17 interested in the entry that is May the 2nd which is
18 called OMISS.

19 A. Okay.

20 Q. I just ask you to read that, the whole
21 entry. It goes on about ten lines before I ask you
22 anything.

23 A. Okay.

1
2 Q. Now, can I ask you to go -- let me do this.
3 Let me try to read through it and if I make a
4 mistake you correct me and we'll try to save some
5 time. Called OMISS, Omiss is an office at the EOUSA?

6 A. That's right. That's the office that Brick
7 Brewer manages.

8 Q. Brick on A/L, annual leave?

9 A. Yes.

10 Q. Discussed the preliminary with Mike. Would
11 that have been Mike Snyder?

12 A. Yes.

13 Q. Common concern, is that with the next --

14 A. Common concern of losing.

15 Q. Of losing?

16 A. Control of contract administration.

17 Q. Then in parentheses what does it say?

18 A. Mike Snyder said Dimm is very arrogant.

19 Q. Who is Dimm?

20 A. He was an INSLAW management type who, if I
21 recollect correctly, worked under John Gizarelli or
22 he may have taken Gizarelli's spot, if Gizarelli had
23 left at that time. This is '83 you're saying?

1 Q. Right.

2 A. Then at that time I believe Dimm was
3 working for Gizarelli.

4 Q. Now, the next sentence is M.S. Is that
5 again Mike Snyder?

6 A. Yes.

7 Q. Said T/H, what does the T/H mean?

8 A. I don't recall specifically but Tyson's
9 name begins with a T and Hamilton's name begins with
10 an H.

11 Q. Trout's name?

12 A. It could have been Tyson or -- I think it
13 was a government -- you asked me to suppose what
14 that means. It could have been that.

15 Q. Either Tyson or Trout and Hamilton?

16 A. Yes. I don't recall.

17 Q. Is it about USA -- the United States
18 Attorney in Pittsburgh? Is that what that means?

19 A. Yes.

20 Q. His remark to an INSLAW team leader, re:
21 Apparent INSLAW bankruptcy?

22 A. Correct, that's what it says.

1
2 Q. And then M.S. again is Mike Snyder -- said
3 he thinks info came from the United States Attorney
4 in California, Steve Trout (phonetic)?

5 A. USA/LA.

6 Q. LA rather, I'm sorry.

7 A. Yes.

8 Q. Who may have gotten info, information is
9 that?

10 A. Yes.

11 Q. From Klaus. Who is Klaus?

12 A. Klaus is a government employee. I don't
13 remember his last name.

14 Q. And does that indicate that you were told
15 by Snyder that he thinks that the info about the
16 apparent INSLAW bankruptcy came from Steve Trout,
17 who may have gotten it from Klaus?

18 A. I don't recall. I mean I'll have to go by
19 this note, what the note says and let it speak for
20 itself. I don't recall the specifics --

21 Q. You don't have a specific recollection?

22 A. No. I think it's a clear note.

23 Q. And the next thing is Trout apparently made --

1
2 maybe you can help me with the rest of that -- some
3 statements?

4 A. (S), some statements.

5 Q. Does that mean a statement or maybe more
6 than one statement?

7 A. Yes.

8 Q. In front of all United States Attorneys?

9 A. At L.A.

10 Q. At L.A.?

11 A. And then question mark after it. I don't
12 know what the question mark means.

13 Q. And do you recall that you heard from
14 Snyder that Trout made some statement about -- would
15 it have been the subject of an apparent INSLAW
16 bankruptcy?

17 A. If that's what the note says. I'm reading
18 it, too, but I don't recall specifics from such a
19 long time ago.

20 Q. I notice that I forgot one other thing, Mr.
21 Videnieks, and that goes back to number 5. It's the
22 last entry in November, number 5, which is dated --
23 this one here is 5, way down at the bottom it says

1
2 February 22, 1985, Harry, is it G?

3 A. Yes, Harry G. I don't know who G would
4 have been. Harry G.

5 MR. COOPER: Could it have been F?

6 THE WITNESS: Is that an F? It looks like
7 my G, but I sure -- Harry G.

8 BY MR. LIGHTFOOT:

9 Q. In any event, it seems to indicate that
10 whoever that person is, that he has your copies,
11 would that be, cc?

12 A. My copy singular it appears to say, of
13 bankruptcy petition. I must have gotten a copy of
14 the bankruptcy petition.

15 Q. And would that indicate that at this point
16 Harry somebody was in possession of yours?

17 A. That's what it appears to say.

18 Q. And do you have any recollection today of
19 who the person is who is referred to as Harry G. or
20 F. or whatever?

21 A. It may be a temporary block of the mind. I
22 really don't remember who Harry G. is. Harry F.
23 would have been Harry Flickinger who was the

1
2 Assistant Attorney General -- Assistant Attorney
3 General -- what was his title? He was below the
4 Assistant Attorney General for administration, one
5 level below him.

6 Q. He was in the Justice Management Division,
7 was he?

8 A. Yes, right.

9 Q. Do you recall having made a request
10 yourself for the INSLAW bankruptcy petition after
11 you had learned it had been filed?

12 A. I don't recall. I may have received a
13 courtesy copy.

14 Q. All right. Did you at any time with
15 respect to -- let me just ask you this. From the
16 point that the bankruptcy petition was filed in
17 February of 1985, did you ever have occasion to
18 visit the executive office of U.S. Trustees?

19 A. No.

20 Q. All right. From the point that the
21 petition was filed, did you ever have any
22 conversations with respect to INSLAW with Mr.
23 Stanton of that office?

1

2

A. Never.

3

4

5

Q. Let me ask you about three deputies, a Mr. --
I'm going to have a problem with the -- Lobisco,
with Mr. Lobisco?

6

A. No.

7

8

9

10

Q. There's a woman by the name of Andrea
Winkler, who is a deputy -- who was a deputy to Mr.
Stanton at the time. Did you ever have any
conversations with her?

11

12

13

14

A. I may have -- the name is familiar, but I
would say, no. To the best of my recollection, no.

15

16

17

18

19

Q. And the last one is a man whose name is
Anthony Pasciuto?

20

21

22

23

A. I know him, okay, and I know Lobisco, but
I've not -- I have not talked to them, no.

Q. Do you recall that you learned the identity
of these people in relation to the bankruptcy filing
in INSLAW?

A. No. They were both working for the Justice
Management Division on the same hallway where I was.

Q. Is that right?

A. Maybe not -- the first guy, Lobisco didn't.

1
2 Vince Lobisco, I know him by sight. Never spoken to
3 him.

4 Q. I see. But did you ever have any contact
5 with any of those three individuals with regard to
6 the INSLAW matter?

7 A. No.

8 MR. LIGHTFOOT: I have nothing further. Do
9 you have any questions?

10 MR. COOPER: No.

11 (Reading and signature not waived.)

12 (Thereupon, at 5:15 p.m., the deposition
13 was concluded.)

14
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DEBRA L. GROTHMANN
Notary Public

MY COMMISSION EXPIRES:

2-14-91

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DISTRICT OF COLUMBIA, to wit:

I, Debra L. Grothmann, the officer before whom the foregoing deposition was taken, do hereby certify that the within-named witness personally appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined by counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this

_____ day of _____, 1987.

DEBRA L. GROTHMANN

Notary Public

MY COMMISSION EXPIRES:

2-14-91

I N D E XDEPOSITION OF PETER VIDENIEKSMARCH 26, 1987EXAMINATION BY: PAGE

MR. LIGHTFOOT 3

EXHIBITS: PAGE

1 16

2-4 17

5 25

6 48

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

PETER VIDENIEKS

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this _____ day of _____, 1987, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

MY COMMISSION EXPIRES: _____

PETTIT & MARTIN

ATTORNEYS AT LAW

1800 MASSACHUSETTS AVENUE, N.W.

WASHINGTON, D. C. 20036

THE INTERNATIONAL BUILDING
500 WASHINGTON STREET
SAN FRANCISCO, CALIFORNIA 94102

60

WITNESS: P. VIDENIEKS CASE: In Re: INSLAW, Inc.

Please note any errors and the corrections thereof on this errata sheet. The rules require a reason for any change or correction. It may be general, such as "To correct stenographic error," or "To clarify the record," or "To conform with the facts."

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>	<u>REASON FOR CHANGE</u>
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U.S. Department of Justice
Civil Office for United States Attorneys
and Constitution Avenue, N.W.
Washington, D.C. 20530

Attention: Mr. Peter Videnieks, Contracting Officer

Re: Contract No. JVD34-82-C-0074
Advance Payments

Mr. Videnieks:

This will confirm and follow-up our meeting on February 4, 1982 at the U.S. Department of Justice regarding the status of the payments under Contract No. JVD34-82-C-0074 and other matters. Pursuant to the request of William E. Baker, Administrative Counsel, who chaired the meeting for the Government, I Kamel Rahol, Director of Procurement, we will be providing an opportunity to explain the circumstances -- and findings -- which apparently led to the Notice of Intent to Terminate Advance Payments which you sent to INSALW, Inc. by dated letter received on January 28, 1982.

We also shall explain why the continuation of advance payments is essential to continued prompt and efficient performance by INSLAW and it is in the best interests of both INSALW and the Department of Justice. This letter is intended to cover only the advance payments issue. To the extent other issues are extant, they will be covered separately to avoid possible confusion of facts or issues.

PETTIT & MARTIN

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1800 MASSACHUSETTS AVENUE, N.W.

WASHINGTON, D. C. 20036

TELEX: 904205 PEMLAW WSH

TELECOPIER: (202) 785-5159

(202) 785-5153

February 10, 1983

HAND-DELIVERED

THE TRANSAMERICA BUILDING
600 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94111

(415) 398-4000

TELEX: 330443 PEMLAW SFO
FAX: 330443 PEMLAW SFO
TELECOM: 415-398-4071

2049 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067

TELEX: 40025 PEMLAW LSA
(213) 553-7145

510 TEXAS COMMERCE BANK TOWER, LB 18
DALLAS, TEXAS 75201

TELEX: 730736 PEMLAW DAL
(214) 748-7850

121 PARK CENTER PLAZA, SUITE 200
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(408) 285-3310

OF COUNSEL

DAVID F. MILLER

JOHN L. BRADLEY

JOHN S. LARSEN

E. LAURENCE BAY

JOHN W. CATES

ROBERT A. EVERETT

ROBERT A. JEFFREY

U. S. Department of Justice
Executive Office for United States Attorneys
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

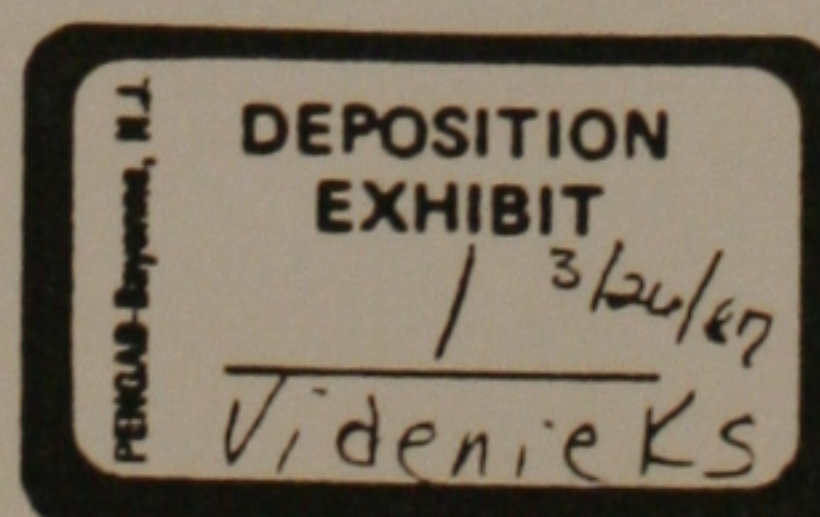
Attention: Mr. Peter Videnieks, Contracting Officer

Re: Contract No. JVUSA-82-C-0074
Advance Payments

Dear Mr. Videnieks:

This will confirm and follow-up our meeting on February 4, 1983 at the U.S. Department of Justice regarding the status of advance payments under Contract No. JVUSA-82-C-0074 and other matters. Pursuant to the request of William Snider, Administrative Counsel, who chaired the meeting for the Government, and of Kamal Rahal, Director of Procurement, we wish to take this opportunity to explain the circumstances -- and misunderstandings -- which apparently led to the Notice of Intent to Discontinue Advance Payments which you sent to INSLAW, Inc. by an undated letter received on January 28, 1983.

We also shall explain why the continuation of advance payments is essential to continued prompt and efficient performance by INSLAW and is in the best interests of both INSLAW and of the Department of Justice. This letter is intended to cover only the advance payments issue. To the extent other matters are extant, they will be covered separately to avoid any possible confusion of facts or issues.



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PETTIT & MARTIN

Mr. Peter Videnieks
February 10, 1983
Page Two

The nub of the matter is straightforward. The Government, by regulation and contract, provides for advance payments where such payments are necessary or desirable to assure performance by a contractor. See Federal Procurement Regulations (FPR), Subpart 1-30.4 -- Advance Payments; Defense Acquisition Regulation (DAR), Appendix E, Part 4 - Advance Payments. The key element in the Government's decision to provide advance payments, aside from the contractor's need, is the assessment of the risk to the Government. Here, as acknowledged by William Whiteley, Supervisory Auditor, the Department's auditor who was in the best position, from the Government's standpoint, among those present at the February 4 meeting to comment on this point, the risk to the Government is very slight. As we described at the meeting and shall outline below, any such risk, however slight, is less today than it was at the time of the award of the contract.

Accordingly, even if any infraction of the covenants in the contract inadvertently occurred, the practical effect has not been to increase the Department's exposure or risk. Hence, discontinuing advance payments would serve no purpose other than retribution by some within the Department against INSLAW -- to the detriment of the important PROMIS Program and the Department's own interests. Such interests can better be served, constructively, through improved communication between the parties.

INSLAW is committed to working with the Department of Justice in an effort to improve the process of communication between the contracting parties. Along these lines, we urge that the Department take all necessary action to make such a commitment meaningful, and that the atmosphere of unfounded accusation and hostility unfortunately evidenced by some at the February 4 meeting be corrected, if need be through a change of administrative personnel on the Government's side or otherwise.

Summary of Facts

On March 16, 1982, the U.S. Department of Justice and INSLAW, Inc. entered into Contract No. JVUSA-82-C-0074 for the implementation of PROMIS in the 94 United States Attorneys' Offices. Article XXXI of the contract covers advance payments. It follows closely the requirements of the Federal Procurement Regulations.

Mr. Peter Videnieks
February 10, 1983
Page Three

At the time of award, INSLAW had an existing banking relationship with the 1st American Bank of Washington, D.C. This relationship included certain loans, specifically a \$200,000 equipment note and a \$500,000 receivables line of credit. There appears to be no question that the Department of Justice was aware of the existence of the banking relationship. We are uncertain, however, of the extent to which the Department was aware of the details of this relationship, the loans outstanding, their terms and conditions and related matters -- including INSLAW's need for and intent to explore other possible banking relationships which might be preferable to 1st American.

On April 13, 1982, INSLAW established a banking relationship with the Bank of Bethesda. This relationship was intended to replace that with the 1st American Bank. It included commitments by the Bank of Bethesda to replace the existing \$200,000 equipment note and the \$500,000 receivables line of credit, and to provide a \$500,000 combination note and revolving line of credit to INSLAW secured by INSLAW's lease at its 1125 15th Street, N.W., Washington, D.C. offices. It is our understanding that the Department now has copies of the correspondence reflecting the new INSLAW banking relationship and its loans/credit lines from the Bank of Bethesda.

The Department was aware of the change in INSLAW's banking relationship, since the Special Bank Account provided for under Contract Article XXXI - Advance Payments was set up at the Bank of Bethesda, with bi-monthly drawdowns co-signed by the Department and INSLAW. There apparently is a legitimate question, however, of when the Department became aware of the additional line of credit which the Bank of Bethesda extended to INSLAW.

At the February 4 meeting Mr. William Whitely stated that the Department became aware of the additional line of credit in September - October, 1982 at which time the matter was regarded as one that would be resolved through the normal audit process. For reasons that are not clear, the issue nonetheless was raised by the Contracting Officer, separate and apart from the normal audit process, at a December 3, 1982 meeting with Murray W. Hannon, Controller of INSLAW, and resulted ultimately in the undated letter from Mr. Videnieks, received by INSLAW on

Mr. Peter Videnieks
February 10, 1983
Page Five

facts -- there would be no purpose in doing so -- or to complicate the administration of the contract. We believe that the facts now must be viewed objectively in the clear light of the intent of the Federal Procurement Regulations and the contract, without the negative cast that an atmosphere of bias or retribution creates.

A fair review of the facts suggests some possibility that INSLAW may not have affirmatively provided all of the information which either was required or desired regarding the change in its banking relationship. Perhaps INSLAW assumed too much regarding the extent of the Department's knowledge of the change in INSLAW's banking relationship from 1st American Bank of Washington, D.C. to the Bank of Bethesda; or of the increased line of credit; or of the significance of the Department's silence from September - October, 1982, to early December 1982, when the matter first was raised by the Contracting Officer. To that extent the undated letter received by INSLAW on January 28, 1983 came as a surprise - it appeared to INSLAW to be a somewhat "after the fact" complaint by the Department.

A fair review of the facts also reveals absolutely no affirmative evidence suggesting that INSLAW intended to violate any of the covenants in Article XXXI of the contract. Indeed, in the one instance where INSLAW felt that it had violated one of the covenants in Article XXXI - because of the Department's delayed payments resulting from the so-called Prompt Payments Act - INSLAW formally so advised the Department and the matter was put to rest. Hence, INSLAW's "track record", so to speak, is of full disclosure, and one must reasonably conclude that the current problem results from an unfortunate lack of or breakdown in communication between the parties.

There appears to be agreement that INSLAW's performance under the contract has been excellent. No purpose would be served by jeopardizing performance under this vital program because of anyone's personal effort to seek retribution against INSLAW, against the best interests of the Department, and/or to pursue their view of a possible technical breach of the covenants in the advance payments article of the contract, i.e., assuming that the Department did not know and/or reasonably should not have inquired into the details of

Mr. Peter Videnieks
February 10, 1983
Page Six

INSLAW's new banking relationship earlier. It thus is necessary to look afresh at whether advance payments still are warranted by the facts and hence should be continued. The facts compel an affirmative response.

INSLAW still needs the advance payments under this contract. The plain fact is -- and this can be confirmed by the Department audit staff -- that INSLAW simply cannot in its present financial condition continue performance without continuation of advance payments. Any delay or discontinuance would threaten timely performance by INSLAW and would, under the circumstances, be extremely arbitrary.

At the same time, the facts -- which also can be confirmed by the Department's audit staff -- reveal that INSLAW's financial condition overall is far better than it was at the time of award of the contract. Hence, the risk to the Government -- which as noted above, is the key to the Government's assessment of advance payments -- is substantially less than it was at the time of award, and on that basis alone advance payments should be continued uninterrupted.

First, the company during the course of the past year has made very substantial progress toward realizing its business goals regarding the development of commercial business. To this extent, INSLAW not only is a going concern but in fact is a growing business with a constantly improving representation in its field.

Second, the financial viability of INSLAW has been confirmed -- objectively by an outsider -- by the fact that the Bank of Bethesda was willing to advance an additional line of credit during the course of the past year. Obviously, if INSLAW were faring poorly, the bank would have no business interest in lending INSLAW more money.

Finally, it is important to note how the increased indebtedness was used and why it was obtained. While money, of course, is fungible and an organization uses any given quantum

Mr. Peter Videnieks
February 10, 1983
Page Seven

of money for a number of purposes, it is important to note that the Executive Office for United States Attorneys' estimated share of the differential between the FY 82 SRU rate and the actual rate experienced by INSLAW is approximately \$200,000, which sum is being returned to INSLAW by the Department incrementally month-by-month through FY 1983. As a practical matter, therefore, INSLAW is "advancing" the Department on a continuing basis more than \$200,000, while at the same time month-by-month the Department is advancing INSLAW approximately \$280,000. INSLAW has no quarrel with this accounting anomaly but this must be recognized in properly analyzing the overall situation. (The estimated differential in Summer, 1982 was approximately \$460,000, almost identical in amount to the increased line of credit.)

Additional portions of the increased line of credit obtained from the Bank of Bethesda have been used to fund INSLAW's commercial marketing program, which assures INSLAW's continuing growth and viability. Long term, the Government benefits from such growth through lower prices and rates, and a wider range of products available to Government customers, all developed at private expense.

One final point: The overall viability of INSLAW, Inc. is underlined by the fact that "venture capitalists" and investment bankers have shown a genuine interest in INSLAW as an investment vehicle for the 1980s. If INSLAW were not a growing concern, then these private entrepreneurs would have no interest in investing their funds in INSLAW. Hence, the objective fact that the Government's risk in providing advance payments is less today than it was last year is proven by the actions of outsiders who view INSLAW strictly as a business investment. As indicated by Mr. William Hamilton, President of INSLAW, at the February 4 meeting, INSLAW would be pleased to provide information regarding the above. Such information, including analyses of INSLAW's future potential and business plans, necessarily is strictly confidential and would have to be provided with that limitation. Information of that type is not ordinarily a part of the Government's routine audit function.

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PETTIT & MARTIN

Mr. Peter Videnieks
February 10, 1983
Page Eight

Conclusion

Based on the facts and the analyses set forth herein, it is clear that no purpose would be served by discontinuing advance payments under the PROMIS contract between INSLAW and the Department, and that such a discontinuance would be extremely detrimental to the Department and to INSLAW. It would be counterproductive, arbitrary and in our view reflect poorly on the Department. Please be assured that INSLAW shares in the sentiments expressed by Messrs. Rahal and Snider for the Department, to the effect that both parties should work to resolve this matter and improve communications under the contract. INSLAW, and its predecessor organization, have been committed to the advancement of justice for more than a decade. Its contribution to that end has long been recognized and it has every reason from a practical standpoint, as well as from the standpoint of its management's corporate policy, to have its relations at every level with the Department progress and improve.

We respectfully request that no further action be taken with regard to discontinuing advance payments under Contract No. JVUSA-82-C-0074.

If you have any questions regarding the above, we shall be happy to discuss them with you at your earliest convenience.

Very truly yours,

PETTIT & MARTIN

By: Harvey G. Spierzer
Harvey G. Spierzer

cc: Kamal Rahal, Director of Procurement
William Snider, Administrative Counsel
William Whiteley, Supervisory Auditor

William Hamilton, President, INSLAW, Inc.
John Hozik, Partner, Arthur Young & Co.

HGS:ba

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Contract JVUSA-82-C-0074

Discontinuation of Advance Payments

FEB 17 1983

W. J. Snider
Administrative Counsel

Peter Videnieks
Contracting Officer

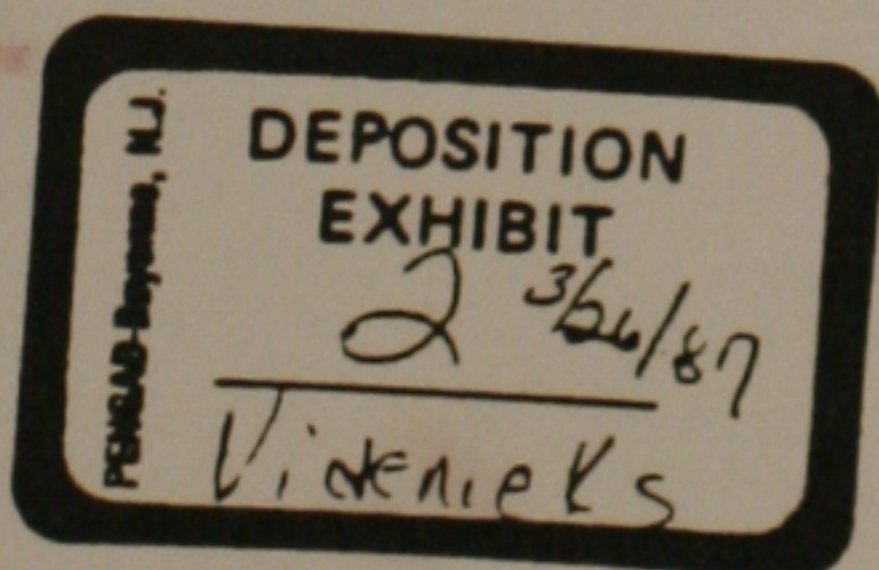
Reference: Pettit and Martin Letter dated 2/10/83.

Please provide your comments regarding the content of the referenced letter. It is a response to the Department of Justice Notice to Discontinue Advance Payments (copy attached) which notified INSLAW of the Contracting Officer's intent to discontinue advance payments in thirty days (February 27, 1983). The notice was precipitated by the disclosure of INSLAW's violation of the provisions of Article XXXI, Advance Payments, of the subject contract.

In addition to any other comments which you may have, please comment on the following statements/points made by INSLAW:

1. "The key element in the Government's decision to provide advance payments, aside from the Contractor's need, is the assessment of the risk to the Government."
2. The timing of the Department of Justice Notice of Intent to Discontinue Advance Payments makes it an "...after the fact' complaint...". (Is there a legal significance here?)
3. INSLAW's violation of provisions of Article XXXI was "...a possible technical breach...".
4. The Government should have "...inquired into the details of INSLAW's new banking relationship earlier."
5. Discontinuation of advance payments would be arbitrary.
6. "...portions of the increased line of credit obtained from the Bank of Bethesda have been used to fund INSLAW's commercial

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UNITED STATES DEPARTMENT OF JUSTICE
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marketing program...". (Can advance payments be authorized if a contractor is able to obtain commercial financing and elects to finance non-contract ventures?)

7. Private entrepreneurs have interest in providing funds to INSLAW. (Apparent ability to obtain private financing.)

In accordance with FPR-30.404(b) "Generally...advance payments should not be authorized unless no other means of adequate financing is available..."

The determination by the Assistant Attorney General for Administration to grant advance payments to INSLAW was based upon the findings that "...no means of adequate financing other than by advance payments are available to the contractor..." as recommended to him by procurement and audit personnel relying upon information made available by INSLAW.

Please provide legal advice with respect to the foregoing by close of business on February 2, 1983. Thank you.

Correspondence copies:

Official File

General Chron

H. Flickinger

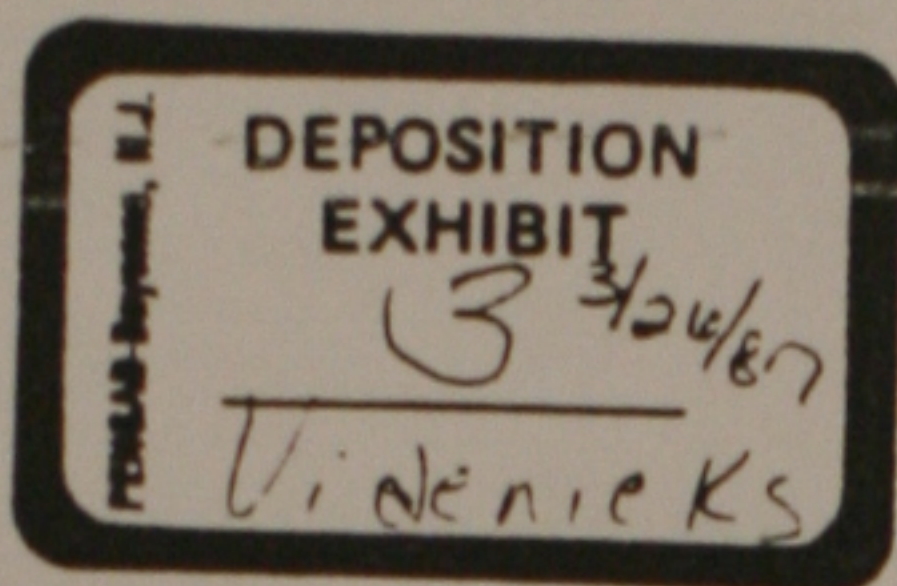
K. Rahal

PBT:PVIDenieks:633-4544:2/16/83:dmk:IBM 2290

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ORIGINATOR
OFFICE SYMBOL
NAME
DATE



CONCURRENCES
OFFICE SYMBOL

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Contract JTUSA-82-C-0074
Discontinuation of Advance Payments

FEB 17 1983

C. M. Brewer, Director
Office of Management Information
Systems and Support
EOUSA

Peter Videnieks
Contracting Officer

Reference: Pettit and Martin Letter dated 2/10/83.

Please provide your comments regarding the content of the referenced letter. It is a response to the Department of Justice Notice to Discontinue Advance Payments (copy attached) which notified INSLAW of the Contracting Officer's intent to discontinue advance payments in thirty days (February 1983). This notice was precipitated by the disclosure of INSLAW's violation of the provisions of Article XXII, Advance Payments, of the subject contract.

In addition to any other comments which you may have, please comment on the following statements/points:

1. "lack of communication" between INSLAW and Department of Justice;
2. "...INSLAW's performance under the contract has been excellent..
3. "...anyone's personal effort to seek retribution against INSLAW.

INSLAW's statements regarding the financial impact of advance payment discontinuation are being reviewed by the Department of Justice Audit Staff. Please comment on the probable programmatic effects of INSLAW's inability to continue contract performance, both, in the short run and after a few sites have PROMIS fully implemented.

Please provide your response by the close of business on February 23, 1983. Thank you.

Correspondence copies:

Official File
General Chron
H. Flickinger
K. Rahal

PBT:PVIDenieks:633-4544:2/16/83:dmk:IRM 2292

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UNITED STATES DEPARTMENT OF JUSTICE
OFFICIAL FILE COPY

17 FEB 1983

Contract JVUSA-82-C-0074
Discontinuation of Advance Payments

Guy K. Zimmerman, Director
Audit Staff
Attn: Mr. Robert Whiteley

Peter Vidoniels
Contracting Officer

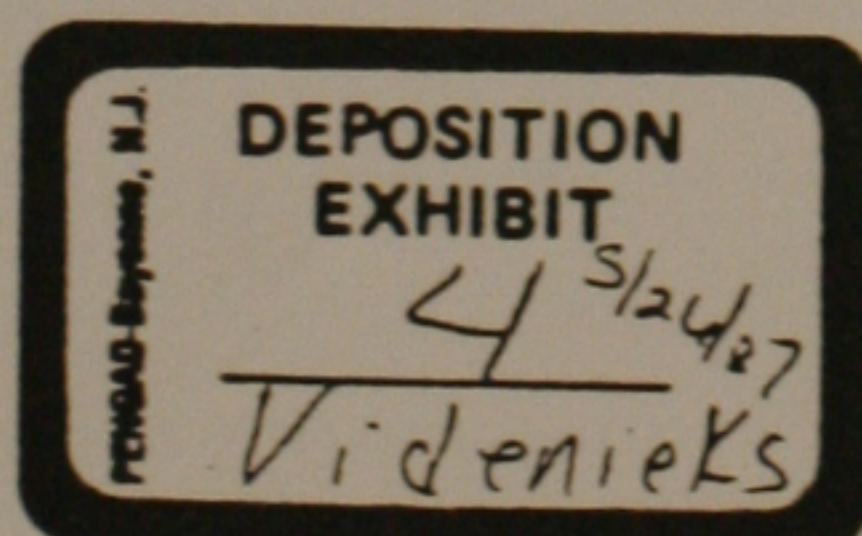
Reference: Pettit and Martin Letter dated 2/10/83.

Please provide your comments regarding the content of the referenced letter. It is a response to the Department of Justice Notice to Discontinue Advance Payments (copy attached) which notified INSLAW of the Contracting Officer's intent to discontinue advance payments in thirty days (February 27, 1983). The notice was precipitated by the disclosure of INSLAW's violation of the provisions of Article XXXI, Advance Payments, of the subject contract.

In addition to any other comments which you may have, please comment on the following statements/points made by INSLAW:

1. The "risk to the Government" of authorizing advance payments to INSLAW "...is very slight."
2. The risk to the Government today is lesser than it was at time of contract award. (Considering DOJ investment on PROMIS-DOJ has contracted for a system and currently the contract has been funded in the amount of \$3,752,000.)
3. "... even if any infraction of the covenants in the contract inadvertently occurred, the practical effect has not been to increase the Department's exposure to risk."
4. The Department was aware of the existence at the time of contract award of the \$200,000 equipment note and the \$500,000 line of credit secured by receivables.
5. "...the Department became aware of the additional line of credit in September - October, 1982 at which time the matter was regarded as one that would be resolved through the normal audit process."

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6. Second paragraph on page 4. (Is INSLAW solvent?)
7. There is "...lack of communication..." between INSLAW and the Department of Justice.
8. Second paragraph on page 5.
9. "...INSLAW's 'track record'...is of full disclosure...the current problem results from...lack of or breakdown in communication between the parties."
10. Second paragraph on page 6. (INSLAW cannot perform without advance payments. Will INSLAW fold without advance payments?)
11. INSLAW's financial condition is better now than it was at time of contract award.
12. INSLAW has more commercial business now than at time of contract award.
13. The Bank of Bethesda confirmed the financial viability of INSLAW by lending INSLAW more money.
14. First paragraph on page 7.
15. INSLAW can get funds from "venture capitalists" and investors. (How much? Are advance payments still necessary? May advance payments be authorized?)
16. INSLAW is a viable going concern.

Please provide your comments by the close of business on February 23, 1983. Thank You.

Correspondence copies:

Official File

General Chron

H. Flickinger

K. Rahal

Robert Whiteley, Audit Staff

PRT:PVIDENIEKS:633-4544:2/16/83:dmk:IBM 2290

General meeting of creditors scheduled for March 19 1P
Harry G. L... 1st floor...
... ..

2/20/85 Telecon w/ Chuck Miller

Top 20 unsecured creditors meet on
Mon. 2/21/85 — We can't go!

General meeting of creditors scheduled
for March 19, 1985, 1P @ Hearing Room
1st floor, American Bldg., 206 15th St. NW.

Miller said just because we're at lunch
we're at a disadvantage... will sit in
if INILAW hasn't... generally confusing.

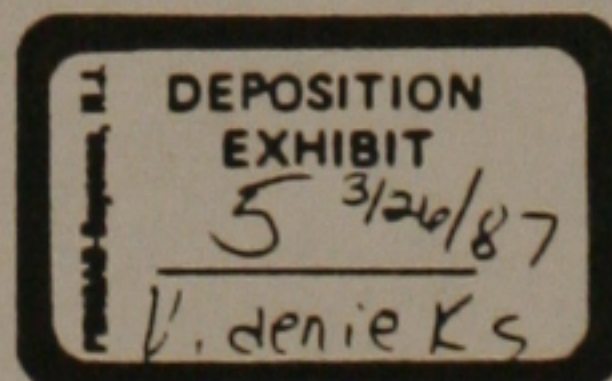
I told him that well construction
for Computer Center costs in the amount of
500-600K... and that INILAW will
over 20 of \$80K.

Miller said that the current list of
creditors is temporary and that a
final list will be filed later....?

2/20/85 -K called w/ "our computer". Eric is...
to Simon... "11" ...
"7". Had him to computer...

2/22/85

2/22/85 Harry G. L... my cc of bankruptcy petition E



Good morning! conditions scheduled for March 19 1P

for day 1 (2/21/85) - 10:00 AM - 12:00 PM

10:00 AM - 12:00 PM - 10:00 AM - 12:00 PM

2/20/85

Telecom w/ Clark Miller

Top 20 unsecured credits met on
Mon. 2/21/85 - We can't go!

Secured meeting of creditors scheduled

1/20/85

Telecon w/ Clark Miller

Top 20 reassured conditions met on
Mon. 2/21/85 — We can't go!

Secured meeting of conditions scheduled
for March 19, 1985, 1 P @ Hearing Room
1st floor, American Bldg., 806 15th St. NW.

Miller said just because we let
were at a disadvantage... had left on
id. T. Wilson has...

2/20/85

Telecon w/ Clark Miller

Top 20 unsecured credits met on
Mon. 2/21/85 — we can't go!

Secured meeting of credits scheduled
for March 19, 1985, 1 P @ Hearing Room
1st floor, American Bldg., 806 15th St. NW.

Miller said just because we let letters
were let at a syndicate ... had left us
if Wilson hasn't ... generally working.

I told him that we'd contact
for Computer Center costs in the amount of
500 - 600K ... and that INSIST 8411
over AP of \$ 80K.

Miller said that the...

Secured meeting of conditions scheduled
for March 19, 1915, 1 P @ Hearing Room
1st floor, American Bldg., 206 15th St. NW.

Miller said just because we let letters
were at a disadvantage ... but list is
if I will be hampered ... Generally satisfactory.

I told him that we'd counterclaim
for Composite Letter into in the amount of
500 - 600 K ... and that INS will
over AP of \$ 80 K.

Miller said that the amount list of
conditions is temporary and that -
final list will be filed later ?

2/20/34 - K called v/ "our counterclaim" ...
to Spencer ...

I told him that well counterclaim
for Copyright Center onto in the amount of
500 - 600 K... and that I will still
over 200 of \$ 60 K.

Miller said that the current list of
conditions is temporary and that a
final list will be filed later ?

[illegible]

2. 11. 19

2/22/81 Harry & Les my cc of bankruptcy petition E

074/15

5/2 Discussed MIT w/PR. She was against
moving to BB. Meeting after Tyson/Ham.
meeting OK.

5/2 Left with w/Dona (8:45) reported
meeting with Ann w/Kennel.

5/2 Called OMIS — Buck on A/L. Discussed
matter w/Mike — common concern of
losing control of contact admin. (M.S.
said Jim is very arrogant.)

M.S. said T/H meeting is about USA Pitt
remarks to INSLOW team leader re
apparent INSLOW bankruptcy. M.S. said
he thinks info came from USA/CA — Steve
Trotter, who may have gotten info from
Klaus. Trotter apparently made some
statement(s) re font of all USA/Hj, @
CA(?)

DEPOSITION
EXHIBIT
3/24/87
Videarick

074/15

5/2 Discussed M11 w/PR. She was against
moving to BB. Meeting with Tyler/Helen.
meeting OK.

5/2 Left with w/Dona (8:45) representing
meeting with Ann w/Kennel.

5/2 Called ORISS — Brick on A/L. Discussed
matter w/Mike — common concern of
losing control of work on colon. (M.S.)
Epid Jiman is very angry out.)

M.S. said 1/4 meeting is about USA Fifth
rounds to INSLOW team leads as
apparent INSLOW bankruptcy. M.S. said

be thanks info came from USA/CA - Stan
T. At ... have ...

seems to BB. Meeting after Tyron/Ham.
meeting OK.

5/2. Left with w/Dona (8:45) representing
meeting with Ann w/Kennel.

5/3 Called Oriss — Brick on A/K. Discussion
matter w/Mike — common concern of
losing control of waterfront colonies. (M.S.
said Jimin is very arrogant.)
M.S. said T/H meeting is about USA F.H.
remarks to INSLOW team leaders re

apparent INSLOW bankruptcy. M.S. said
he thinks info comes from USA/CA - Stan
T/H, who may have gotten info. from
Klaus. T/H. apparently made some
statements) a lot of all USA H; e
CA(?)

—

F-B-C-C-E-E-D-I-N-G-S

Whereupon,

STANLEY M. SALUS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COOPER:

Q: Good morning, Mr. Salus. My name is Dean Cooper. I represent the Department of Justice and the United States of America in the Inslaw bankruptcy proceeding. Your deposition is being taken this morning by consent of the parties.

Would you please state your name for the record.

A. Stanley M. Salus.

Q. Where are you currently employed, Mr. Salus?

A. With the firm of Doctor, Doctor and Salus, a PC.

Q. Are you one of the named partners in that firm?

A. I am a principal in the firm.

Q. How long have you been affiliated with that

1 P-R-O-C-E-E-D-I-N-G-S

2 Whereupon,

3 STANLEY M. SALUS

4 was called as a witness and, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. COOPER:

8 Q. Good morning, Mr. Salus. My name is Dean
9 Cooper. I represent the Department of Justice and the
10 United States of America in the Inslaw bankruptcy
11 proceeding. Your deposition is being taken this
12 morning by consent of the parties.

13 Would you please state your name for the
14 record.

15 A. Stanley M. Salus.

16 Q. Where are you currently employed, Mr. Salus?

17 A. With the firm of Docter, Docter and Salus, a
18 PC.

19 Q. Are you one of the named partners in that
20 firm?

21 A. I am a principal in the firm.

22 Q. How long have you been affiliated with that

1 law firm?

2 A. Since 1974.

3 Q. In connection with the Inslaw bankruptcy
4 litigation, is it correct that you have been one of
5 the counsel of record on the Inslaw bankruptcy matter?

6 A. That is correct.

7 Q. Have you represented Inslaw from time to
8 time in that capacity in court?

9 A. From time to time that is correct, although
10 I would say within the last 6 to 12 months my partner,
11 Charles Docter has been the principal counsel. I have
12 had very little to do with it since that time.

13 Q. But you have been involved in that 6 to 12
14 month period?

15 A. Yes.

16 Q. Without revealing the substance of those
17 discussions, have you had discussions with the Inslaw
18 client regarding their claim concerning the Department
19 of Justice?

20 A. I presume that I have within that 6 to 12
21 months. As I sit here I cannot tell you that I can
22 recollect any specific conversations with them

1 regarding the Department of Justice claim in the last
2 six months.

3 Q. But have you generally been involved in
4 strategy sessions in the last 6 to 12 months involving
5 the Inslaw bankruptcy proceeding?

6 A. I think that is fair to say.

7 Q. You have not in any way removed yourself
8 from the Inslaw bankruptcy litigation.

9 MR. O'NEILL: Objection, it mischaracterizes
10 his earlier testimony.

11 THE WITNESS: I do think that
12 mischaracterizes it. Because my participation level
13 has diminished substantially in the last 6 to 12
14 months.

15 BY MR. COOPER:

16 Q. What is the reason for that?

17 A. The workload. We try not to duplicate the
18 workload. My partner has become more involved because
19 he had more time to do that. I have become less
20 involved in the case because it did not require two of
21 us and because my caseload has required participation
22 in tort matters.

1 Q. When is the last time you recall appearing
2 in court on behalf of Inslaw?

3 A. I can't answer that. I don't have a
4 specific recollection of when that was.

5 Q. Would it have been any time within the past
6 three months?

7 A. I don't think so.

8 Q. Within the last six months?

9 A. Other than a continued section 341 meeting
10 scheduled by the U.S. Trustee's office, no. In actual
11 court proceedings, I doubt that I have been to court
12 for Inslaw within the past six months.

13 Q. During the last three months have you
14 appeared for Inslaw at unsecured creditors meetings or
15 general creditor committee meetings?

16 A. I think I have been to a committee meeting.

17 Q. Within the last 3 months?

18 A. Yes.

19 Q. Prior to the 6 months to 12 months period
20 and for the record I will state I believe Inslaw filed
21 for bankruptcy in 1978?

22 A. That is correct.

1 Q. Since the period Inslaw filed for bankruptcy
2 is it fair to state that you have been involved in
3 discussions with your clients concerning strategy in
4 connection with its claim concerning the Department of
5 Justice?

6 A. I think it is fair to say that I have been-
7 involved in some discussions regarding the Department
8 of Justice and probably strategy is overstating it. I
9 was never involved, significantly involved in any of
10 the Department of Justice discussions.

11 Q. Have you been involved in discussions with
12 our counsel that have been retained by Inslaw in
13 connection with the bankruptcy primarily handling the
14 Department of Justice claims?

15 A. I am sure that I have talked to Leigh
16 Ratiner once or twice but only once or twice and not
17 as to any real substance, and my partner has handled
18 that almost exclusively. By way of explanation so you
19 will understand, this was not a purposeful happening.
20 Many times Mr. Docter and I will start out on a case
21 together because in the beginning the work is much
22 more intense, but as we begin to put the case into

1 some focus, as it begins to take some shape, either
2 the one of us will spend more time on it and the other
3 spending less time and eventually it will become the
4 sole responsibility of either one of us. That is
5 basically what has happened in Inslaw.

6 Q. Have you had any discussions with Mr.
7 Stephen Kurtzman or any members of his firm in
8 connection with the Department of Justice claim of
9 Inslaw?

10 A. I don't believe so.

11 Q. What firm is Mr. Kurtzman with?

12 A. Nixon, Hargrave, Devans and Doyle.

13 Q. You have had no discussion with Mr. Kurtzman
14 or any members of that firm?

15 A. No, definitely not.

16 Q. Have you been involved on any efforts on
17 behalf of Inslaw to represent them in their claim for
18 the Department of Justice?

19 MR. O'NEILL: I will object. I don't know
20 the materiality or relevance of conversations Mr.
21 Salus may have had relative to hiring other than
22 lawyers for the proceeding for which this deposition

1 is taken.

2 MR. COOPER: Your objection is noted. Can
3 you answer?

4 MR. O'NEILL: I may instruct him not to
5 answer.

6 MR. COOPER: I think it clearly goes to the
7 question of the propriety of his testimony in this
8 proceeding and the degree of involvement he has had
9 representing the company he is prepared to testify on
10 behalf of today. I believe that is a sufficient
11 statement of materiality.

12 MR. O'NEILL: Go ahead.

13 THE WITNESS: Would you restate the
14 question.

15 BY MR. COOPER:

16 Q. Have you been hired in connection with
17 attempts to find trial counsel to represent Inslaw in
18 connection with the trial of its claim against the
19 United States and the Department of Justice?

20 A. No, I have not.

21 Q. Does the nature of your practice, Mr. Salus,
22 involve bankruptcy proceedings that are pending in the

1 District of Columbia and in Virginia? Are those two
2 areas where you practice?

3 A. I also practice in Maryland as well and from
4 time to time I have a case out of town.

5 Q. In connection with your cases in Maryland,
6 are those cases administered by the U.S. Trustee's
7 office in Alexandria?

8 A. No, they are not.

9 Q. However, cases in the District of Columbia
10 and Virginia are administered by the U.S. Trustee's
11 office in Alexandria?

12 A. That is correct.

13 Q. Do you remember approximately when the U.S.
14 Trustee's office in Alexandria was formed and when
15 they began playing a role in the administration of
16 bankruptcy cases?

17 A. I certainly do.

18 Q. When was that?

19 A. October of 1979 when the Bankruptcy Reform
20 Act became effective. It was part of that Bankruptcy
21 Reform Act that the pilot program of U.S. Trustee's
22 was enacted.

1 Q. And you have practiced in the District of
2 Columbia and in Virginia since October of 1979?

3 A. I have indeed.

4 Q. In connection with your representation
5 generally in cases, do you represent both creditors
6 and debtors in bankruptcy cases?

7 A. Yes, I do.

8 Q. In connection with cases where you have
9 represented creditors, and I don't need you to
10 identify specific cases, have you ever had occasions
11 since October of 1979 to call the U.S. Trustee's
12 office for any purpose?

13 A. In connection with cases where I represented
14 creditors.

15 Q. Creditors?

16 A. I am sure that I have.

17 Q. On many occasions?

18 A. No, I wouldn't characterize it as many
19 occasions.

20 Q. What would have been the general purpose,
21 not case specific? Is it safe to say it would have
22 been general informational questions that you would

1 have posed to the trustee?

2 A. I think that is a fair statement. Sometimes
3 I would provide information to the U.S. Trustee's
4 office and sometimes I would request information.

5 Q. Do you recall calling the U.S. Trustee's
6 office in any case where you represented a creditor to
7 discuss the formal list of creditors that had been
8 filed by a debtor?

9 A. No, I don't recall that at all.

10 Q. Is that something you would consider,
11 however, to be a legitimate area of concern to a
12 trustee?

13 A. As a bankruptcy practitioner, that is not
14 something I would generally call the U.S. Trustee's
15 office. I would send someone to the courthouse to
16 check the records directly.

17 Q. As a bankruptcy practitioner, what is your
18 opinion as to the responsibility and functions of the
19 United States Trustee in Alexandria? What role do
20 they play?

21 A. They have certain statutory roles as set out
22 in the code. Generally speaking, their role is to

1 administer a panel of private trustees in Chapter 7
2 cases, to administer Chapter 11 cases to some extent.
3 The extent of their role is certainly one that is in
4 question with certain bankruptcy practitioners. By
5 that I mean that the U.S. Trustee's office has carved
6 out a larger role for itself than I believe many
7 practitioners thought they would, because all of their
8 duties are not specified in the code. As part of the
9 role that they have carved out, they oversee fee
10 applications, they oversee the formation of creditors'
11 committees. They oversee the filing of schedules.
12 They oversee the monthly reports. They oversee the
13 payment of taxes. Those are some of the important
14 areas where they exercise their administrative
15 obligations.

16 Those are basically the duties I think they
17 have carved out for themselves.

18 Q. With respect to the reference you just made
19 to the concern on the part of local practitioners
20 regarding what I think you referred to as an expanded
21 role that the trustees have been playing in certain
22 cases, were you referring to the role they played in

1 certain Chapter 11 cases as opposed to certain Chapter
2 7 cases?

3 A. Yes.

4 Q. In connection with your representation of
5 debtors in the District of Columbia and in Virginia,
6 have you had occasions to have conversations with the
7 U.S. Trustee's office in Alexandria?

8 A. Yes, I have.

9 Q. In representing a debtor that is something
10 you would have need for frequent communication with
11 the U.S. Trustee's office?

12 A. Frequent may be overstating it somewhat, but
13 you have contact with U.S. Trustee's office in regard
14 to every debtor case.

15 Q. In connection with the Inslaw matter, do you
16 recall having any telephone conversations with any
17 employees of the U.S. Trustee's office in Alexandria
18 concerning the Department of Justice?

19 A. Yes, I do. I have had an opportunity to
20 review my time records, and I have found that there
21 were several early on in the case. If you would like,
22 I would be happy to refer to them specifically.

1 Q. Before we do that, I would like to have the
2 reporter mark the time records that you are referring
3 to as Salus Exhibit 1.

4 [Salus Exhibit No. 1 marked
5 for identification.]

6 BY MR. COOPER:

7 Q. Salus Exhibit 1 purports to be the time
8 records of SMS diaries from February 4, 1985 through
9 February 28, 1985. Is that correct, Mr. Salus?

10 A. That is correct.

11 Q. Were these diaries prepared
12 contemporaneously by you after these respective
13 telephone calls or matters that you worked on?

14 A. That is correct. These are my diary
15 entries. They are prepared almost immediately after
16 the service is rendered. At the time that these diary
17 entries were prepared, we were still using the method
18 of dictating our diary entries, so if I had a
19 conversation with someone over the telephone, when I
20 finished that conversation, I would immediately pick
21 up my Dictaphone and dictate the diary entry. These
22 were all made contemporaneous.

1 Q. When you dictate, I assume a secretary types
2 the dictation?

3 A. Correct.

4 Q. In connection with your diaries, do you then
5 proofread your diaries and make revisions to those
6 diaries or does Salus Exhibit 1 reflect verbatim what
7 you dictated?

8 A. Very rarely do I proofread and edit my
9 diaries.

10 Q. Do you recall during the time period
11 February 4, 1985 through February 28, 1985 having
12 edited or revised your diaries?

13 A. No, I do not recall editing them or revising
14 them.

15 Q. You were going to go through the list and
16 point out to me the respective calls that you received
17 from the U.S. Trustee's office having anything to do
18 with the Department of Justice?

19 A. On February 15, which is the fourth page,
20 there is a telephone call from Chuck Miller. It
21 refers to establishing new bank accounts which is a
22 new requirement. We wanted to make sure there was

1 insurance and then he said he wanted more background
2 information on the Department of Justice dispute. He
3 had received an indication that DOJ is very interested
4 in the case.

5 Q. Am I correct that your logs reflect that the
6 entire time of that telephone call lasted 15 minutes;
7 is that correct?

8 A. That is correct.

9 Q. At the time that you received that call from
10 Chuck Miller, were you knowledgeable about what is
11 referred to here as the Department of Justice problem?

12 A. Only in a cursory way.

13 Q. Were you able to give Chuck Miller the
14 information he requested in that telephone call at
15 that time?

16 A. To the best of my recollection, I only gave
17 him a cursory description of what I understood the
18 problem to be.

19 Q. To the best of your recollection at this
20 time, what was your understanding of the nature of the
21 Department of Justice problem on February 15, 1985?

22 A. That the department had unlawfully

1 terminated a contract and owed the debtor an
2 additional 1 million plus for fees earned under that
3 contract.

4 Q. Does your log for February 15 reflect to the
5 best of your recollection what Mr. Miller said to you
6 on that date?

7 A. That is correct.

8 Let me add one other thing. At that time it
9 was also my understanding that the Department of
10 Justice dispute was fueled by the fact that there was
11 an ex-Inslaw employee working at DOJ who was
12 principally -- maybe I should not characterize it as
13 principally but who was responsible to some degree for
14 the termination of the Inslaw contract.

15 Q. I don't want you to reveal anything that is
16 privileged but is it fair to say that you would have
17 received that information from your client or someone
18 affiliated with your client?

19 A. Yes.

20 Q. Did you tell that also to Mr. Miller?

21 A. I believe I did.

22 Q. What was the next call?

1 A. The next call was February 19. That was a
2 call from Bill White who said there is substantial
3 information in the Inslaw case from the Department of
4 Justice. He would like more information so he could
5 speak intelligently about the case and the dispute
6 with DOJ.

7 Q. That telephone conversation on February 19
8 lasted 25 minutes?

9 A. That is correct.

10 Q. Bill White was the U.S. trustee in
11 Alexandria at that time?

12 A. That is correct.

13 Q. Had you ever spoken with Bill White before?

14 A. Yes, I had.

15 Q. Bill White was somebody at that point you
16 knew personally?

17 A. Yes, I did.

18 Q. Does that log of the call on February 19,
19 1985 reflect to the best of your recollection at this
20 time what Mr. White said to you in that conversation?

21 A. Yes, it does.

22 Q. Mr. White asked you in that conversation for

1 more information about the Department of Justice
2 matter. Had you obtained more information about the
3 Department of Justice matter upon February 19 than you
4 had on February 15 when Mr. Miller had called you?

5 A. I cannot recall.

6 Q. Do you recall what you said to Mr. White
7 when he asked you for that request?

8 A. No, I do not. I can only surmise that I
9 probably gave him the same description of the dispute
10 that I had given to Chuck Miller.

11 Q. Did that seem to satisfy Mr. White?

12 A. I think it did.

13 Q. Did he ask you if you would pursue the
14 matter and obtain further information for him?

15 A. I honestly do not have a recollection of
16 that.

17 Q. Do you recall having attempted to obtain
18 more information about the Department of Justice
19 dispute following February 15?

20 A. I have no recollection of that.

21 Q. What is the next matter concerning the
22 Department of Justice?

1 A. I would add it was a little unusual for me
2 to receive a call from Bill White on a case. That was
3 not the norm.

4 Q. Why is that?

5 A. Because Bill rarely called about these
6 debtor cases or about the administration of these
7 cases. It would be one of his subordinates.

8 Q. Had you never received a call from Bill
9 White prior to February 15, 1985?

10 A. Obviously, I can't recall but that may be
11 close to accurate.

12 Q. Had you ever called Bill White in any of
13 your cases prior to February 19, 1985?

14 A. I can't say. I am sure I have talked to
15 him. I cannot say whether I ever initiated a call to
16 Bill White regarding any of our cases. It would be
17 unusual for me to call Bill White about any of our
18 cases. It would have to be a substantial problem. I
19 would not start out by calling Bill White. I would
20 have started out by calling one of the subordinates in
21 the office.

22 Q. What is the next matter?

1 A. The next would be a February 21 telephone
2 call from Chuck Miller where he inquired whether
3 someone from Justice Management Division could observe
4 the organization meeting of the creditor committee as
5 that individual is helping install a case management
6 system. At that time, I told him it was not a good -
7 idea.

8 Q. And that telephone call on February 21
9 lasted ten minutes?

10 A. Approximately.

11 Q. Does that description of the call on
12 February 21, 1985 reflect your best recollection at
13 the present time as to what Chuck Miller told you on
14 February 21?

15 A. Yes.

16 Q. Why was it that you told Chuck Miller you
17 didn't think it was a good idea for someone from the
18 Justice Management Division to observe the
19 organizational meeting of is creditors' committee?

20 A. I honestly don't remember what was in my
21 mind at the time. I can surmise several different
22 theories. Most of all, it is simply inappropriate.

1 Q. Why is that?

2 A. Because the composition of the creditors'
3 committee is supposed to be a select group of the
4 largest creditors that are willing to serve on the
5 committee. Outside influences are not welcome from
6 the debtor's perspective.

7 Q. Your statement that you didn't think it was
8 a good idea was a statement that was to reflect the
9 debtor's view from the debtor's perspective. Is that
10 correct?

11 A. Yes. Definitely. Obviously it was enhanced
12 by the fact that we are dealing with a Department of
13 Justice employee and that there is a dispute with the
14 Department of Justice.

15 Q. In connection with your representation of
16 other creditors in bankruptcy matters, have you ever
17 seen ex-officio status on an unsecured creditors'
18 committee?

19 A. No, I have not.

20 Q. On behalf of one of your creditor clients,
21 have you ever attended a creditors' committee meeting
22 where your client was not actually one of the sitting

1 participants on that committee?

2 A. No, I don't believe I ever have, and I can't
3 recall any committee that ever had any other creditor
4 on it.

5 Q. Do you recall whether or not Chuck Miller
6 told you in the February 21, 1985 conversation who -
7 that individual was in the Justice Management Division
8 who wanted to observe the meeting?

9 A. I don't recall.

10 Q. Have you ever conducted any investigation to
11 ascertain who might have called Mr. Miller?

12 A. I don't recall if I did.

13 Q. Do you know from your experience as a
14 bankruptcy practitioner whether a debtor's file of the
15 list of 20 largest unsecured creditors is to include
16 any governmental creditors?

17 A. I have to answer that slightly differently
18 than you asked it. Generally, the list of top 20 is
19 not to include governmental entities. However, the
20 governmental entities that I believe was the intention
21 of whoever drafted the rules that provide for the list
22 of the top 20 creditors, my belief is that they had

1 taxing authorities when they spoke with governmental
2 entities. I am not sure as an academic matter whether
3 or not governmental entities are creditors in the
4 sense they were intended to be part of the top 20.

5 Q. What is the next reference in your diaries
6 concerning the Department of Justice?

7 A. February 21 I had a telephone call from Bill
8 Hamilton who told me that someone at the executive
9 office of the U.S. Attorney told an Inslaw employee he
10 was advised by the Office of the U.S. Trustee that
11 Inslaw would not come out of Chapter 11 successfully.
12 Bill was obviously very angry about that information.
13 We discussed the interests of the Office of the U.S.
14 Trustee in getting from the Department of Justice what
15 was indicated by my earlier phone conversations. I
16 also recall, although not stated here, that that
17 information was told to the Inslaw employee in an
18 attempt to hire away that Inslaw employee.

19 Q. You were told that by Mr. Hamilton?

20 A. I believe so.

21 Q. Did you ever conduct an interview of the
22 Inslaw employee involved?

1 A. I did not. recollection.

2 Q. Did anyone else at your firm at that time
3 conduct such an interview?

4 A. I don't believe so. immediate entry we are

5 Q. You were dependent at least in this
6 conversation upon what Mr. Hamilton told you?

7 A. Right. WITNESS: Let me amplify my last answer.

8 Q. Did Mr. Hamilton provide you with any
9 documentary information or any other information?

10 A. No, I don't believe so. and McCoy.

11 Q. Was Mr. Hamilton agitated at the time that
12 you received this call? I think you said he was
13 angry. session that lasted 35 minutes?

14 A. He was angry. I can't really recall whether
15 he was agitated. I am not sure I know how to
16 characterize that.

17 Q. But you know he was angry during that call?

18 A. I'll used the word incensed. I must have
19 had that in mind.

20 Are you ready to go to the next call?

21 Q. No, not yet. After receiving Mr. Hamilton's
22 call on February 21, what, if anything, did you do?

1 A. I have no recollection.

2 Q. I would like to ask you one more question
3 about the February 21 call.

4 MR. O'NEILL: This immediate entry we are
5 talking about?

6 MR. COOPER: Yes.

7 THE WITNESS: Let me amplify my last answer.
8 The next telephone entry indicates I did discuss it
9 with our co-counsel in the case, Glenn Gerstell of the
10 firm of Milbank, Tweed, Hadley and McCoy.

11 BY MR. COOPER:

12 Q. Is this the reference on February 21, 1985,
13 conversation that lasted 35 minutes?

14 A. Right.

15 Q. And it also concerned other matters as well?

16 A. Yes.

17 Q. You also discussed a motion for relief from
18 stay filed by Boston Financial and the handling of
19 AT&T?

20 A. Right.

21 Q. Then your reference refers to a problem with
22 problem with the Justice Department?

1 A. I probably should have said and the problem
2 with the Justice Department.

3 Q. What was the problem with the Justice
4 Department?

5 A. To the best of my recollection, I was
6 probably referring to the problem that had just been
7 conveyed to me by Mr. Hamilton of an employee being
8 told that Inslaw would not come out of Chapter 11.
9 That is the best of my recollection. That is probably
10 the problem I was referring to.

11 Q. To the best of your recollection when you
12 spoke with Mr. Gerstell on February 21, 1985, had Mr.
13 Gerstell already been informed of this allegation
14 regarding the hiring of an Inslaw employee by the
15 executive office of the U.S. Attorney?

16 A. I have no recollection.

17 Q. You might have mentioned it?

18 A. I may have been the first person but I don't
19 know.

20 Q. If we can go back a moment, I don't know
21 that I asked you this question, with respect to the
22 reference on February 21, 1985, the 15-minute

1 conversation with Bill Hamilton, does the description
2 of that conversation reflect your best recollection as
3 of the present time as to what Mr. Hamilton said on
4 February 21, 1985?

5 A. Yes, it does except for the one additional
6 part which I mentioned, that is, that this was said in
7 an effort to hire away an employee.

8 Q. Other than that you don't recall any
9 additional information as to what was said on that
10 date?

11 A. No, I don't.

12 Q. As to the conversation also on February 21,
13 the 35-minute conversation with Mr. Gerstell, do you
14 remember any details as of this present time of your
15 discussions with him concerning the Justice Department
16 problem?

17 A. No, I don't.

18 Q. Would you like to go to the next reference?

19 A. The next reference is February 21 again and
20 this is a telephone conference with Bill White, Glenn
21 Gerstell, Larry Gesner, an associate in the Milbank
22 firm. We advised Bill that a DOJ employee from the

1 Executive Office of the U.S. attorney told an Inslaw
2 employee that the U.S. Trustee's office said Inslaw
3 would not make it out of Chapter 11. We explained the
4 problem with this kind of activity. Bill said he
5 would investigate it and assured us his office would
6 remain independent and not provide information to DOJ.

7 Q. Does this reference reflect your best
8 current recollection of what was said to Bill White on
9 February 21, 1985?

10 A. Yes, it does.

11 Q. Do you have any recollection of anything
12 else being said by either party during that call on
13 February 21, 1985?

14 A. I don't have any specific recollection of
15 that right now. I have not really had an opportunity
16 to reflect on it, but, as I sit here, no.

17 Q. During that telephone conference with Bill
18 White do you recall whether Mr. Hamilton was listening
19 in on that call?

20 A. No, I don't. I think I would have listed
21 him if he listened in on the call.

22 Q. According to this description, it says you

1 advised Bill Wright, an employee of the U.S. Attorneys
2 Office told an Inslaw employee "said Inslaw would not
3 make it out of Chapter 11."

4 A. Right.

5 Q. Had you spoken with the Inslaw employee who
6 was involved by February 21, 1985 before you had this
7 conversation with Bill White?

8 A. I don't have a specific recollection of
9 doing so.

10 Q. Had you seen any documentation concerning
11 anything that related to that allegation prior to this
12 telephone conversation with Bill White on February 21?

13 A. I have no recollection of that.

14 Q. Do you have a recollection of either of
15 these other attorneys, Glen Gerstell or Larry Gesner,
16 having any other information as of the time of the
17 telephone call with Bill White on February 21?

18 A. No, I don't believe -- I don't believe I
19 recall any such thing. As you continue to ask me
20 these questions, I keep wondering whether some time
21 someone didn't talk to that employee and get either an
22 affidavit or some written information.

1 Q. Who would that person have been?

2 A. I don't know, probably someone from Glen.
3 Gerstell's/ office.

4 Q. Why would it have been from your office
5 rather than his?

6 A. Only because we were trying to divide the -
7 work and I was overwhelmed with the beginning of this
8 Chapter 11 case. That is just very vague and I don't
9 know if I have that confused with some other situation
10 or not.

11 Q. Do you recall as of the present time having
12 ever seen an affidavit of the employee involved or an
13 draft of an affidavit for that employee?

14 A. I can't say that I do.

15 Q. You have no recollection so when you said
16 that a minute ago --

17 A. I don't know if I am confusing it with some
18 other situation but for some reason it just seems to
19 me there should have been something. I honestly
20 cannot say I have a specific recollection of seeing a
21 written document anywhere.

22 MR. COOPER: I would request the pertinent

1 files be searched to ascertain if this are any
2 documents to this matter, whether draft or final that
3 were prepared either for Mr. McKain or Mr. Hamilton or
4 anyone else concerning this particular issue.

5 MR. O'NEILL: Do you want me to search his
6 files?

7 MR. COOPER: If necessary.

8 BY MR. COOPER:

9 Q. Mr. Salus, I believe you have stated you did
10 not prepare an affidavit. Is that correct?

11 A. That is correct. I think if I had it would
12 be in my diary entry.

13 Q. Is it possible another attorney prepared and
14 affidavit that this might also be contained in your
15 files?

16 A. Is it possible?

17 MR. O'NEILL: I will take a look at his
18 file.

19 MR. COOPER: Could you check with Gerstel
20 and Gesner as well.

21 [Brief recess.]
22

1 MR. COOPER: Back on the record.

2 We just are returning from a short break. I
3 would just like to state for the record so that it is
4 clear that the United States and the Department of
5 Justice is reserving any hearsay objections with
6 respect to Mr. Salus' diaries notwithstanding my
7 examination of Mr. Salus on the hearsay portions of
8 Salus Exhibit No. 1. With that reservation, I would
9 like to proceed.

10 BY MR. COOPER:

11 Q. Calling your attention again to the February
12 21, 1985 diary reference to the telephone conference
13 with Bill White, do you recall what Mr. White said
14 when told of this information during the conference
15 call?

16 A. Other than what I put down here, I have no
17 independent recollection.

18 Q. Was it your impression during that
19 conference that Mr. White had been previously advised
20 of this matter?

21 A. No, I don't think so.

22 Q. I say that only because my diary entry says

1 he would investigate and get back to us?

2 Q. Was it your impression you believed what he
3 said at that time?

4 A. I believe so. I have no independent
5 recollection of how I felt about it at the time.

6 Q. On February 21 of 1985 there was a 10-minute
7 conversation that you had with Bill White. Would you
8 describe that?

9 A. Yes, this was his return call. He said he
10 had talked to his staff and found that no opinions
11 were given to DOJ regarding the viability of Inslaw.
12 He promised that nothing other than the public record
13 would be given to Department of Justice. He was
14 confirming the independence of his office. I remember
15 that he was very positive in his assertion of their
16 independence and either at this time or a later time
17 and I can't tell you exactly when, I remember it was
18 as if I was insulting his integrity by making these
19 calls. I don't know if it was in regard to this or
20 both problems. I clearly remember when we discussed
21 the confidentiality order that was later entered by
22 the court that he clearly indicated at that time that

1 he felt that I was insulting his integrity. I don't
2 remember whether that same attitude carried through on
3 this, but I believe it probably did to some extent.

4 Q. Do you recall anything else having occurred
5 in that conversation other than what is regarded in
6 your notes on February 21, 1985 reference?

7 A. I don't have a specific recollection. My
8 notes are obviously a summary because the conversation
9 was longer than it takes to read my notes.

10 Q. Do you have any recollection of what you
11 might have said during that conversation with Mr.
12 White on February 21?

13 A. No, I do not today have any specific
14 recollection.

15 Q. Do you recall whether you said anything to
16 Mr. White?

17 A. I certainly did say something to him. I am
18 sure of that but I cannot tell you what I said.

19 Q. Do you have any recollection of telling Mr.
20 White that you did not believe his representation that
21 his staff had found that no opinions were given to
22 Department of Justice?

1 A. No, I don't have any recollection of saying
2 that.

3 Q. What is the next reference concerning the
4 Department of Justice?

5 A. The next reference is February 25 which is a
6 telephone call from Chuck Miller in which he advises-
7 an attorney from the Department of Justice, Commercial
8 Litigation Division insists on being present at the
9 creditor organization meeting. Chuck said he could
10 not be there but he said if the attorney would not
11 leave voluntarily, it was Chuck's suggestion, if the
12 attorney does not leave, he wants us to be prepared to
13 hold the meeting in our conference room with only the
14 members of the committee he appoints.

15 Q. Chuck Miller was the analyst in the trustees
16 office that you referred to earlier?

17 A. That is correct.

18 Q. It states that Chuck was told he, and I
19 assume that refers to this attorney from the
20 Department of Justice, cannot be there; is that
21 correct?

22 A. That is correct.

1 Q. Who told Chuck that this attorney from the
2 Justice Department cannot be there? Was that
3 something you told Chuck?

4 A. I believe that would have been me telling
5 him. Incidentally, this diary entry is a good example
6 of the fact that I did not edit these things because
7 the punctuation is obviously wrong.

8 Q. I agree.

9 After you told Chuck that the attorney from
10 the Justice Department could not attend the creditor
11 committee organization meeting, that was when Chuck
12 said he was not sure that the Justice Department
13 attorney would leave voluntarily?

14 A. That is correct.

15 Q. Did he tell you that the Justice Department
16 attorney intended to go even if Inslaw objected to it?

17 A. I believe he did say that or words to that
18 effect.

19 Q. Did he say the Justice Department attorney
20 may still want to go?

21 A. May still want to attend, yes.

22 Q. And what to do in that instance?

1 A. Right.

2 Q. Was there ever in attendance at this
3 organizational meeting of the creditors committee by
4 an attorney from the Department of Justice?

5 A. I don't believe so.

6 Q. Does the description of the conversation on
7 February 25, 1985, the 15-minute conversation -- does
8 that reflect your best recollection of what was said
9 during that conversation?

10 A. Yes.

11 Q. The words here are the words to your best
12 recollection that were used?

13 A. No. I think the words here may very well be
14 my words in summarizing the conversation.

15 Q. Do you have any different recollection at
16 this time as to specific words that were used that
17 have a different suggestion than the description of
18 the February 25 conversation?

19 A. No.

20 Q. On that same day, you also charged 30
21 minutes of time for research as to who can serve on a
22 creditors committee? Is that correct?

1 A. Right.

2 Q. Was there ever in attendance at this
3 organizational meeting of the creditors committee by
4 an attorney from the Department of Justice?

5 A. I don't believe so.

6 Q. Does the description of the conversation on
7 February 25, 1985, the 15-minute conversation -- does
8 that reflect your best recollection of what was said
9 during that conversation?

10 A. Yes.

11 Q. The words here are the words to your best
12 recollection that were used?

13 A. No. I think the words here may very well be
14 my words in summarizing the conversation.

15 Q. Do you have any different recollection at
16 this time as to specific words that were used that
17 have a different suggestion than the description of
18 the February 25 conversation?

19 A. No.

20 Q. On that same day, you also charged 30
21 minutes of time for research as to who can serve on a
22 creditors committee? Is that correct?

1 A. That is correct.

2 Q. Were you looking into the question as to
3 whether or not the Justice Department could serve on
4 the creditors committee?

5 A. I don't know. That is a fair presumption
6 obviously in light of the earlier diary entries but I
7 don't know.

8 Q. You don't recall?

9 A. I don't recall.

10 Q. What is the next reference concerning the
11 Justice Department?

12 A. The next reference is on February 25 at a
13 conference with Bill and Nancy Hamilton to prepare for
14 the organization meeting of the creditors' committee
15 and discuss the latest problems with the Department of
16 Justice?.

17 A. What is the reference there to the latest
18 problems with the Department of Justice? Do you
19 recall if that was this matter of wanting to attend
20 the meeting or was it something else?.

21 A. I presume that that is one of the problems
22 that we discussed. I don't have a specific

1 recollection. I also looked earlier and found that I
2 don't have any notes of the meeting.

3 Q. What is the next reference?

4 A. The next reference is February 25. This is
5 a telephone call with Larry Gesner and the last
6 sentence of that entry states , "We also discussed -
7 continuing derogatory statements made by Department of
8 Justice and the need to coordinate a strategy to stop
9 such statements."

10 Q. Is Larry Gesner an attorney with the law
11 firm of Milbank, Tweed?

12 A. He is.

13 Q. He is an attorney who works with Eliot
14 Richardson?

15 A. Yes. He worked mostly under Glen Gerstel.

16 Q. In connection with the reference there, you
17 also discuss continuing derogatory statements made by
18 the Department of Justice. Were you aware or had you
19 been provided with information regarding those
20 statements prior to your conversation with Mr. Gesner?

21 A. I must have been.

22 Q. In other words, you recall having been

1 advised of that before?

2 A. Right. the only recollection that you have

3 Q. Would that information most likely have come
4 from Mr. Hamilton?

5 A. I believe so. having discussed with me

6 Q. Had you ever conducted any independent
7 inquiry or investigation to ascertain the nature of
8 any statements made by the Department of Justice aside
9 from anything that Mr. Hamilton have told you?

10 A. No, I don't believe I did. Inslaw won't make

11 Q. Do you recall having discussed with Mr.
12 Gesner a strategy to stop such statements?

13 A. It says I did. I do not have an independent
14 recollection of what strategy we discussed.

15 Q. What is the next reference? you on February

16 A. The next reference is February 25 and it is
17 a telephone call from yourself, Dean Cooper, and you
18 made that call to request that Inslaw return certain
19 government-furnished equipment.

20 Q. Do you recall anything in more detail about
21 that call, what the nature of the government-furnished
22 equipment was? two small pieces. I don't know why I

1 A. No, I don't.

2 Q. Is this the only recollection that you have
3 of that phone call?

4 A. Yes.

5 Q. Do you recall having discussed with me
6 during that telephone call either the issue concerning
7 whether someone from the Executive Office of U.S.
8 Attorneys had tried to hire away an Inslaw employee or
9 might have otherwise made statements regarding whether
10 the trustees had said something like Inslaw won't make
11 it in Chapter 11?

12 A. No, I don't. I had no recollection in that
13 regard.

14 Q. What is the next reference?

15 A. I received another call from you on February
16 26, again about the government-furnished equipment.

17 Q. Does this help refresh your recollection as
18 to what this matter was regarding the
19 government-furnished equipment?

20 A. No, it doesn't.

21 Q. I will say that my recollection is that
22 somehow it was two small pieces. I don't know why I

1 say two but I have in the back of my mind we are
2 talking about two pieces of equipment that were not
3 substantial, very expensive or anything like that.

4 Q. There is another reference noted on February
5 26 of a 15-minute conversation with Mr. Hamilton?

6 A. Yes.

7 Q. Would you discuss the pertinent portion of
8 that?

9 A. The diary entry indicates that I discussed
10 with him an action against the Department of Justice,
11 and my recollection would be that we were talking
12 about, I think, there was a board of contract appeals
13 action pending at that time and we were probably
14 discussing that to some extent.

15 Q. Following the call from Bill White that you
16 received on February 21, 1985, did you ever learn of
17 any subsequent actions by Mr. White to further explore
18 the matter that you had asked him about?

19 A. I have no recollection of ever learning of
20 anything further.

21 Q. I would like to call your attention to page
22 5 of your diary. There are two references here that I

1 see that were skipped. Let's go back a moment to the
2 entry on the 19th on page 4. If you look there, that
3 was the conversation that you discussed on February 19
4 with Bill White where he stated there was substantial
5 interest in the Inslaw case and the Justice Department
6 and he would like more information so he can speak
7 intelligently about the dispute with Department of
8 Justice. I call your attention to a 25-minute
9 conversation on February 21 of a conversation that
10 appears to be that you had with Larry Gesner, in the
11 middle of the page?

12 A. Middle of the same page?

13 Q. The next page, I am sorry.

14 A. Yes.

15 Q. Would you describe the pertinent portion of
16 that.

17 A. We were obviously talking about several
18 different matters, Boston Financial was a secured
19 creditor or a leasing creditor. I can't remember
20 which. We were talking about the revised cash flow in
21 regard to AT&T. Let me rephrase that.

22 My recollection is that we had a cash

1 collateral order in connection with two banks. AT&T
2 wanted some revisions to be sure that it did not
3 impact on any of their interests. Then we discussed
4 the dispute with the Department of Justice. I cannot
5 recall as I sit here today what aspect of that dispute
6 we discussed.

7 Q. On February 20 you had another conversation
8 with Mr. Gesner. It says an attempt to call Bill
9 White to discuss Department of Justice dispute?

10 A. Yes.

11 Q. Does that refresh your recollection as to
12 what you and Mr. Gesner were talking about on February
13 20?

14 A. No. I presume although this seems to be out
15 of order -- no, it doesn't. I don't know whether we
16 were going to call him to provide him information, but
17 his request for information didn't come until a day
18 later. So the answer is I don't know what we were
19 intending to do.

20 Q. I don't mean to mislead you, but I think his
21 request for information came the day before, on
22 February 19.

1 A. Where is that? provided to the United

2 Q. On page 4. Salus will also testify that Mr.

3 A. With that said, it may well be that Larry
4 Gesner who was more familiar with the Department of
5 Justice matter than I was and I were going to call
6 back Bill White and give him some background
7 information on the Board of Contract Appeals aspect of
8 it and the negotiations aspect of it through his
9 office.

10 Q. When your reference on February 20 states
11 that an attempt to call Bill White was made, does that
12 refresh your recollection that you tried to call Mr.
13 White and was unable to reach him?

14 A. That is correct.

15 Q. Then you subsequently did place a telephone
16 conference to Mr. White on February 21; is that
17 correct?

18 A. That is correct.

19 Q. Mr. Salus, we have been through your diaries
20 which I believe you have stated in each instance
21 reflect your best recollection of what occurred with
22 certain additions on occasion. The answers to

1 interrogatories that were provided to the United
2 States states that, "Salus will also testify that Mr.
3 White stated that he was under intense pressure from
4 the Department of Justice on the Inslaw case in the
5 period immediately following Inslaw's bankruptcy
6 filing."

7 Are you prepared to testify that Mr. White
8 stated he was under intense pressure from the
9 Department of Justice on the Inslaw case?

10 A. Intense pressure are not my words. It is
11 clear from my diary entries that he was under some
12 pressure from the Department of Justice. I would be
13 prepared to testify he was under some pressure.

14 Q. To provide information; is that correct?

15 A. That is the way he expressed it to me.

16 Q. Do you have any other information?

17 A. No.

18 Q. As your diary shows, is it also fair to
19 correct and does it fairly characterize the nature of
20 these calls from Mr. White that substantial interest
21 in the Inslaw case had been expressed to Mr. White by
22 the Department of Justice?

1 A. That is correct.

2 MR. COOPER: May I have this marked as Salus
3 Exhibit No. 2.

4 Q. Does [Salus Exhibit No. 2 marked for
5 concerning the identification.]

6 BY MR. COOPER:

7 Q. Would you look at Salus Exhibit No. 2 which
8 appears to be a copy of a transmittal slip dated March
9 1, 1985 from Pat Frohman, Assistant U.S. Attorney to
10 Mr. Brewer. Have you ever seen this document before?

11 A. I don't believe so.

12 Q. Do you know anything about that document
13 from your first-hand knowledge other than just reading
14 it?

15 A. No, I don't know anything about it.

16 MR. COOPER: I ask the reporter to mark as
17 Salus Exhibit 3, a February 26 letter from Dean S.
18 Cooper to Mr. Stanley M. Salus with a two-page
19 attachment.

20 [Salus Exhibit No. 3 marked
21 for identification.]

22 BY MR. COOPER:

1 Q. Mr. Salus, do you recall having seen Salus
2 Exhibit No. 3?

3 A. Yes, I do. I recall this letter.

4 Q. Does this refresh your recollection
5 concerning the matter you testified to previously
6 concerning the government-furnished equipment on which
7 you and I had conversation?

8 A. Yes, I think it does.

9 Q. What is your best recollection after having
10 reviewed Salus Exhibit 3 as to what the
11 government-furnished equipment matter concerned?

12 A. Well, I guess my recollection doesn't go
13 beyond this document that it had to do with the items
14 that are listed in this letter, and all I can remember
15 is this modem for some reason.

16 Q. Why is that?

17 A. I knew what a modem was.

18 Q. Do you recall, Mr. Salus, that you and I
19 subsequently entered into a stipulation that was filed
20 in court regarding this matter after Inslaw gave its
21 permission for the government to remove its computer
22 in approximately the middle of March of 1985?

1 A. I have a vague recollection of that. I
2 don't have a specific recollection of it.

3 Q. Do you recall who at the company, at Inslaw,
4 reviewed the list of equipment and worked on this
5 matter with you in connection with the government's
6 request?

7 A. My recollection is that it would have been
8 Nancy Hamilton.

9 Q. Is this your handwriting on the letter?

10 A. No. My handwriting does not appear anywhere
11 on here.

12 Q. Mr. Salus, are you aware of any instances
13 where any employee, principal or attorney of Inslaw
14 met with Judge Bason concerning the Department of
15 Justice dispute that was not on the record?

16 MR. O'NEILL: The dispute was not on the
17 record.

18 BY MR. COOPER:

19 Q. Where there was a meeting with Judge Bason
20 or a meeting with Judge Bason by any -- let me just
21 restate that so we have a complete question.

22 Mr. Salus, are you aware of any instance

1 since Inslaw filed for bankruptcy or prior to Inslaw
2 filing for bankruptcy where any principal of Inslaw,
3 any employee of Inslaw, any representative including
4 attorneys of Inslaw met with Judge Bason or members of
5 his immediate staff regarding the dispute between
6 Inslaw and the Department of Justice that was not part
7 of a proceeding that was held on the record?

8 A. No, I am not.

9 Q. You are not aware of any instance where Mr.
10 Hamilton might have had lunch with Judge Bason prior
11 to the filing of the adversary proceeding?

12 A. Definitely not. I would be shocked.

13 Q. Are you aware of any telephone conversations
14 by attorneys, either yourself or other partners of
15 yours to Judge Bason regarding the dispute with the
16 Department of Justice which were not part of a
17 conversation which was on the record in the
18 proceeding?

19 A. No, I don't believe I am.

20 I did not participate. I have some
21 recollections of something to do with the extension of
22 time within which to retain the Nixon, Hargrave firm.

1 I don't know whether it was with Judge Bason or not,
2 but I just remember there was some discussion of how
3 to get that extension.

4 MR. COOPER: I have no further questions.

5 [The deposition was concluded at 11:30 a.m.]
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CERTIFICATE OF NOTARY PUBLIC/COURT REPORTER

I have read the foregoing pages 3 - 53 of my deposition and find the transcription to be accurate except for any corrections noted.

MICHAEL M. SALUS

Date _____

Sworn and subscribed to before me

this _____ day of _____,

19____.

Notary Public in and for

My Commission expires:

Albert J. Gaskin
Notary Public in and for
the District of Columbia

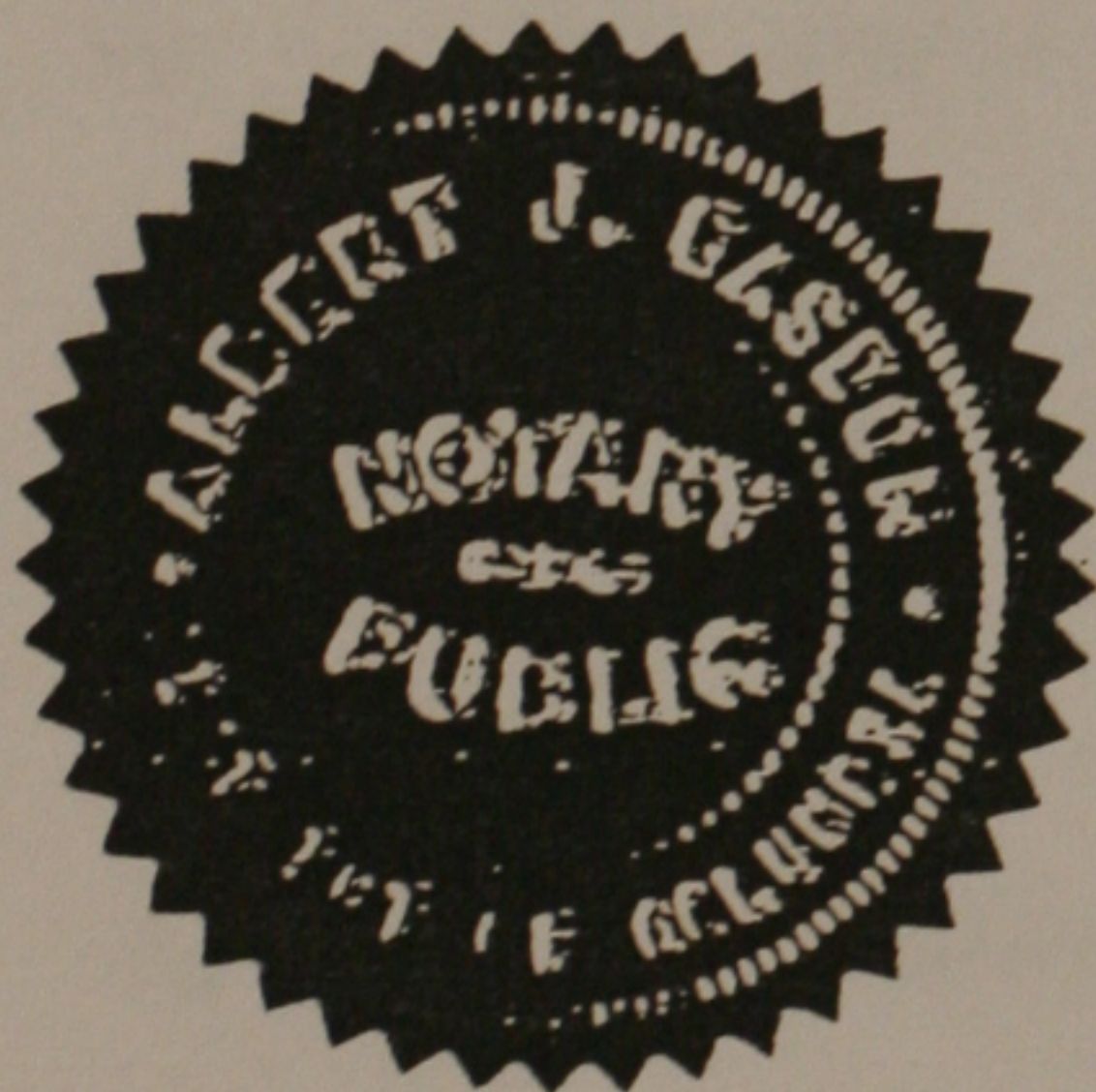
My Commission expires:

July 11, 1990

CERTIFICATE OF NOTARY PUBLIC/COURT REPORTER

I, Albert J. Gasdor, the officer before whom the foregoing proceedings were taken, do hereby certify that the deponent was duly sworn by me; that the testimony was stenographically recorded by me and, thereafter, reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the testimony given.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this proceeding, nor financially or otherwise interested in the outcome of this litigation.



A handwritten signature of Albert J. Gasdor in cursive script, written over a horizontal line.

Albert J. Gasdor

Notary Public in and for
the District of Columbia

My Commission expires:

July 31, 1990

SMS-Diaries

INSLAW, INC.

<u>DATE</u>	<u>TIME</u>	<u>CLIENT</u>	<u>DESCRIPTION</u>
85/02/04	180	Inslaw, Inc.	Initial conference with Bill Hamilton, President of Inslaw. Full review of background information.
85/02/05	30	Inslaw, Inc.	Telephone Bill Hamilton (twice) regarding allocation of cash flow.
85/02/06	15	Inslaw, Inc.	Telephone Bill Hamilton to schedule meeting at Glenn Gerstell's office.
85/02/07	120	Inslaw, Inc.	Conference at Glenn Gerstell's office with Bill Hamilton and Larry Gesner and Nancy Hamilton to discuss Chapter 11 filing and things that may be done in connection therewith.
85/02/07	150	Inslaw, Inc.	Dictate initial pleadings for filing, including statement pursuant to Rule 2016(b), petition page, Exhibit A application to employ counsel including trips to Court to file the petition and initial list of creditors.
85/02/07	40	Inslaw, Inc.	Miscellaneous telephone calls with Larry Gesner regarding Prince George's landlord and tenant action.
85/02/07	10	Inslaw, Inc.	Telephone Glenn Gerstell regarding notice to creditors of emergency application for use of cash collateral and application to be retained counsel.
85/02/07	15	Inslaw, Inc.	Telephone Larry Gesner to coordinate filing of application regarding cash collateral and notice to creditors.
85/02/07	75	Inslaw, Inc.	Conference at client's office with Bill Hamilton and Glenn Gerstell regarding effective filing and preliminary discussions regarding use of cash flow.
85/02/08	75	Inslaw, Inc.	Conference at Glenn Gerstell's office with Bill Hamilton and Murray Hannon to prepare for hearing on motion to use cash collateral.
85/02/08	195	Inslaw, Inc.	Attendance at hearing on motion for authority to use cash collateral.
85/02/08	165	Inslaw, Inc.	Conference with Murray Hannon, Nancy Hamilton to discuss establishing new books and record new bank accounts, weekly reporting requirements to the secured creditors, monthly operating reports, preparation of statement of executory contracts, schedules and statement of affairs.

SALUS Ex. #1
3-27-87
(S)

(1)

SMS-Diaries

INSLAW, INC.

<u>DATE</u>	<u>TIME</u>	<u>CLIENT</u>	<u>DESCRIPTION</u>
85/02/10	30	Inslaw, Inc.	Review and revise application for extension of time within which to file schedules, and notice of automatic stay in Preudential case.
85/02/11	15	Inslaw, Inc.	Telephone conference James Robinson of C & P and Nancy Hamilton regarding requests for deposit by C & P.
85/02/11	15	Inslaw, Inc.	Telephone Larry Gesner of Millbank, Tweed, e to discuss suit by landlord of Prince George's County
85/02/11	15	Inslaw, In .	Telephone Nancy Hamilton to discuss request for telephone deposit. She has also received request for deposit from C&P for the watts line. I instructed her to study a monthly bill before we respond to a request.
85/02/11	10	Inslaw, Inc.	Telephone Nancy Hamilton. She does not yet have the list of all known creditors, but promises it is being prepared. She will have Bill call to execute the new list of 20 largest unsecured.
85/02/12	15	Inslaw, Inc.	Dictated letter to Bill Hamilton forwarding letter from counsel for Micro Electronics; dictated letter to counsel for Micro Electronics advising that business of Inslaw is not in jeopardy.
85/02/13	15	Inslaw, Inc.	Telephone Larry Gesner to discuss proposed confidentiality orders. ✓
85/02/13	20	Inslaw, Inc.	Conference with CAD to discuss problem of health insurance and recovery of offset made by Bank of Bethesda.
85/02/13	10	Inslaw	Telephone James Dimm, Vice President of Marketing to discuss his claim against the company.
85/02/13	20	Inslaw	Telephone Mrs. Murphy at C&P to discuss demand for deposit. Requested her to reduce deposit request and accept installment payments toward the deposit. She promises to review my request and get back to me tomorrow.
85/02/13	15	Inslaw	Telephone Ken Rosen. counsel for AT&T. ✓

(2)

Date	Time	Client	Description
85/02/13	15	Inslaw	Telephone Alan Sailor of U.S. Concorde, a creditor by reason of a lease agreement
85/02/13	15	Inslaw	Telephone Nancy Hamilton. She will send a copy of a papers regarding the bank loan. We discussed the situation regarding payment of rent. Advised her that I had received a call from James Gimm. She is to send the February check for health insurance.
85/02/14	10	Inslaw	Telephone Nancy Hamilton. List of all known creditors should be completed today. She was requested by a creditor to pay a small outstanding balance. - I instructed her to refuse in no uncertain terms.
85/02/14	15	Inslaw	Telephone Brian Rachlin (463-7256), attorney for a creditor. Wanted some information regarding the Debtor's status to report to his client.
85/02/14	10	Inslaw	Telephone Bill Hamilton. The debtor is represented Pettit & Martin generally for government contract problems and specifically in regard to the Department of Justice problem.
85/02/14	15	Inslaw	Telephone Kathy Little of Pettit & Martin to discuss the retention of her firm as special government contact counsel. She will prepare a draft application to be retained, for our review. Explained to her she can proceed to file the necessary appeal regarding the Department of Justice decision, even though she has not yet been formally retained. Also explained her how to keep her diaries.
85/02/14	15	Inslaw	Telephone Philip Mason-Off, realtor regarding Te Road property. Advised him of higher offer, \$18. He will find out whether his client is willing to meet that offer and let me know.
85/02/14	15	Inslaw	Telephone Mrs. Murphy at C&P. Her office is unable to lower the request for a deposit of \$25,000. However she is willing to take payments over a six-month period equaling \$4,166.66 per month, plus the normal telephone bill.
85/02/14	15	Inslaw	Telephone Criminal Justice Office. She was concerned about the completion of their contract. I assured her that the company is viable and intend to complete the contract.
85/02/14	55	Inslaw	Conference with Bill and Nancy Hamilton to review of all known creditors; proposed weekly accounts receivable report; proposed monthly cash receipts

S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/14	10	Inslaw	Telephone Mr. Koon, counsel for W. D. Campbell (furniture company) owed approximately \$19,000. He needed some general information in order to report to his client.
2/15	15	Inslaw	Telephone Chuck Miller. He wanted to be sure new bank accounts were established and insurance was all in place. He also wanted some background on the Dept. of Justice problem, as he has received an indication that the Department of Justice is very interested in the case.
2/15	20	Inslaw	Telephone Jeremy Sachs at Lincoln National Life regarding group life and health insurance. He agreed that they will not lapse the policy, providing the company will convert to a 31-day grace period.
2/19	15	Inslaw	Telephone Ken Rosen, counsel for AT&T. He has inserted two additional paragraphs into Cash Collat Order, which he is Federal Expressing to us today. His concern is that the liens of the banks are not construed to affect the property of AT&T.
2/19	60	Inslaw	Conference with Murray Hannon to discuss format of monthly cash position statements and the preparation of an application to retain him for accounting services.
2/19	20	Inslaw	Telephone Bill White. There is substantial interest in the Inslaw case from the Dept. of Justice. Would like more information, so that he can speak intelligently about the case and the dispute with DOJ.
2/20	15	Inslaw	Telephone Nancy Hamilton. Advised her health insurance policy will not be cancelled. She says Larry Gesne handled Boston financial problem prior to Chapter 11. She wanted some guidance regarding scheduling of creditors.
2/20	15	Inslaw	Telephone Mike Schuchat, counsel for Temporalie. He needed some information background regarding and probability of success for his client.
2/20	15	Inslaw	Telephone Mrs. Murphy at C&P. Agreed with her that the debtor would make a deposit of \$25,000, payable in six equal monthly installments commencing Mar 1985. She will send a letter confirming the arrangement.
2/20	15	Inslaw	Telephone Nancy Hamilton. Advised her to be prepared for the meeting.

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S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/20	(Continuation)		to make first installment payment on deposit. She re- requested that I call regarding an accounts receivable that is being withheld because of the Chapter 11. We also arranged an appointment for Bill and myself to prepare for the organization meeting of Creditors Committee.
2/20	15	Inslaw	Telephone He wanted some basic information on Chapter 11 filing. His court is a customer.
2/20	15	Inslaw	Telephone regarding account receivable from He will authorize release of payment after he receives my letter stating that Inslaw is a Debtor in Possession.
2/20	15	Inslaw	Dictate letter to confirm that Inslaw is the Debtor in Possession and that payment of \$36,000 should be made immediately.
2/20	30	Inslaw	Review motion for relief from stay by Boston Financial
2/20	20	Inslaw	Telephone Larry Gesner to discuss background on Boston Financial; proposed revised cash collateral order entered by AT&T; and dispute with Department of Justice
2/20	10	Inslaw	Telephone Judge Bason's law clerk.
2/20	10	Inslaw	Telephone Larry Gesner to advise that the Judge's law clerk should be contacted as soon as he reviews cash collateral order presented by AT&T. An attempt to call Bill White to discuss Department of Justice order.
2/20	20	Inslaw	Telephone Nancy Hamilton. She wanted to alert me a call from Software House that needs to be assured the company's liability and the antidiscrimination provisions under the Bankruptcy Code. We discussed the inquiries we are getting from Micro Design about the purchase of Congressional business. Advised her that had called the regarding payment the \$36,000.
2/21	25	Inslaw	Review documents from U. S. Concord, Inc. regarding lease of DecSystem Vax 11/780 Computer system.
2/21	10	Inslaw	Telephone Larry Gesner regarding cash collateral Bank of Bethesda is strongly opposed to the AT&T of the order. The Debtor would be satisfied with order.

S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/21	10	Inslaw	Telephone Judge Bason's law clerk to advise that Bank of Bethesda strongly opposed to AT&T version of the cash collateral order.
2/21	15	Inslaw	Telephone Randy Waterfield from Arthur Young & Co. which company had been the auditors for Inslaw. The last audit performed was for the fiscal year ending September 1983. Arthur Young is willing to assist the Debtor in any capacity. Arthur Young still does the income tax returns. I agreed their retention should be authorized for the purpose of doing tax returns and an audit if required.
2/21	10	Inslaw	Telephone Les Nicholson of Health Care System, a customer. He wanted some assurance about the viability of the company and procedures under Chapter 11.
2/21	10	Inslaw	Telephone Chuck Miller. He wanted to know whether someone from Justice Management Division could observe the organization meeting of the Creditors Committee, and that individual is helping install a case management system. I told him I did not think that was a good idea.
2/21	15	Inslaw	Telephone Wallie Hamshire of ComCell, one of the two largest unsecured creditors.
2/21	15	Inslaw	Telephone Bill Hamilton. Someone at Executive Office of the U. S. Attorney's told an Inslaw employee that he advised by the Office of the U. S. Trustee that Inslaw would not come out of Chapter 11 successfully. Bill is incensed by this false information. We discussed the interest that the Office of the U. S. Trustee is getting from DOJ.
2/21	35	Inslaw	Telephone conference Glen Gerstell and Larry Gesner to discuss handling of Motion for Relief from Stay filed by Boston Financial, the handling of AT&T, and a problem with the Justice Dept.
2/21	20	Inslaw	Telephone conference Bill White, Glen Gerstell and Larry Gesner. We advised Bill that a DOJ employee from the Executive Office of the U. S. Attorneys told an Inslaw employee that the "Trustees" said Inslaw would not make it out of Chapter 11. We explained the problem with this kind of activity. Bill said he would investigate it and assured that his office would remain independent and not provide information to DOJ.
2/21	10	Inslaw	Telephone Bill White. He has talked to his staff and that no opinions were given to DOJ regarding the viability

S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/21 (continuation)			of Inslaw. He promises that nothing other than the public record will be given to DOJ.
2/21	20	Inslaw	Telephone Nancy Hamilton. She is still having a problem. If they do not contact us by tomorrow she will give me the name of the individual to contact.
2/22	15	Inslaw	Dictated letter to Nancy Hamilton regarding U.S. Concord lease and forwarding copy of letter regarding formation of creditors conference. Dictated separate letter forwarding record searches from Maryland State Dept. of Assessments & Taxation.
2/22	10	Inslaw	Dictated letter to Mrs. J. Murphy to confirm telephone installment payments for deposit on phone bill.
2/22	10	Inslaw	Telephone Ms. Springs of Amoco Oil. She was referred me by Inslaw. She says they can no longer use the car because of the Chapter 11. The account is overdue 120 days, although the amount outstanding is only \$177.
2/22	15	Inslaw	Telephone Nancy Hamilton regarding customer list and creditor that was left off the list of 20 largest unsecured creditors. It appears that creditor is only a contingent debt.
2/22	10	Inslaw	Dictate instructions to secretary regarding Stuart Thomsen, counsel for Digital Financial; dictate letter to Larry Gesner forwarding copies of pleadings.
2/25	15	Inslaw	Telephone Chuck Miller, an attorney from Dept. of Justice, Commercial Litigation Division. Insists on being present at the creditor committee organization meeting. Chuck was told he cannot be there, but he is not sure the attorney will leave voluntarily. If that is the case, he wants us to be prepared to hold the meeting in our conference room, with only the members of the committee that he appoints.
2/25	30	Inslaw	Research as to who can serve on a creditors committee
2/25	15	Inslaw	Telephone Allen Sailer of U.S. Concord. He was concerned about the amount scheduled by the Debtor as the outstanding balance for his company's claim. I

S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/25	15	Inslaw	Telephone Mr. Stowers of Baltimore Gas & Electric regarding utility deposit. He is agreeable to six month deposit if we can manage to demonstrate that the amount of electricity use is going to go down.
2/25	90	Inslaw	Conference with Bill and Nancy Hamilton to prepare for organization meeting of creditors committee and discuss latest problems with the Department of Justice.
2/25	195	Inslaw	Attendance at organization meeting of creditors committee. (3 hours, 15 minutes)
2/25	15	Inslaw	Telephone Larry Gesner to discuss letter from counsel the Bank of Bethesda. We agreed any further discussion regarding the format of weekly accounts receivable reports should be handled by our office. We also discussed continuing derogatory statements made by Dept. Justice and the need to coordinate a strategy to stop statements.
2/25	15	Inslaw	Telephone John Tucciarone, counsel for Boston Finance who wanted to know the status of the insurance and retainer.
2/26	15	Inslaw	Telephone David Davenport, counsel for Data Tel. Data Tel would like to repossess two computers that are not being used.
2/25	15	Inslaw	Telephone Dean Cooper, attorney with Commercial Litigation Division of the Department of Justice. He wants the government furnished equipment returned March 8 and March 15.
2/26	15	Inslaw	Telephoned Nancy Hamilton regarding return of government furnished equipment and proposal from Data Tel.
2/26	15	Inslaw	Telephone Mr. Stowers of Baltimore Gas & Electric. He agreed to a deposit of \$10,000 payable at \$2,000 a month commencing March 7.
2/26	15	Inslaw	Telephone Mrs. Kriznuski of Suburban Bank regarding a Visa account

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S.M.S. DIARIES

Date 1985	Time (H:M)	Client Name	Description
2/26	10	Inslaw	Telephone Dean Cooper at Dept. of Justice. He would like a response as soon as possible regarding his request to recover government furnished equipment.
2/26	15	Inslaw	Telephone Bill Hamilton regarding payment of rent; and meeting to discuss action against Department of Justice.
2/26	15	Inslaw	Dictate letter to Nancy Hamilton regarding record search in Prince Georges County.
2/27	15	Inslaw	Telephone Nancy Hamilton deposit for C&P telephone; and analysis of Bank of Bethesda offset.
2/27	15±	Inslaw	Telephone Beth Huber of AT&T Communications. She wanted information regarding a filing. She did not request a deposit.
2/27	15	Inslaw	Telephone Ron Cain, counsel for Prudential Life Insurance, landlord at Lanham facility. His principal concern is the payment of rent directly.
2/27	25	Inslaw	Telephone Steve Leech. He has been contacted by Capital Systems to represent Capital and also the Creditors' Committee. We discussed the background of the case. We also discussed whether there would be a conflict in representing Capital and the Committee. He wants to know whether the Debtor would have an objection to that dual representation.
2/27	90	Inslaw	Review notes regarding services to be performed by Murray Hannon. Dictate application and order for retention of Murray Hannon to perform accounting services.
2/28	20	Inslaw	Dictate application and order to retain Arthur Young and Company.
2/28	30	Inslaw	Review and revise application and order to retain Murray W. Hannon
2/28	15	Inslaw	Telephone Nancy Hamilton, regarding preparation of the Schedules; letter from Arthur Young & Co. and Data Tel.

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ROUTING AND TRANSMITTAL SLIP

Date 3-1-85

TO: (Name, office symbol, room number, building, Agency/Post)

Initials

Date

1 Mr. Brewer RECEIVED

copy this note

FILE	5-22	
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Note and Return

As Requested	For Clearance	<input checked="" type="checkbox"/> Per Conversation
Circulate	For Correction	Prepare Reply
Comment	<input checked="" type="checkbox"/> For Your Information	See Me
Coordination	Investigate	Signature
	Justify	

REMARKS

Re: Inslaw Inc., Bky No. 85-00070

Attached is a copy of what has been filed so far in the Inslaw bankruptcy. There is a long list, and an amended list, of creditors, but I do not see Justice claim unless it is well disguised. Therefore under Bankruptcy Rule 30(c)(2) also attached, Justice must file claim, within a time to be fixed by the Court.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Pat Frohman, AUSA

2124 G O.S.Ct

Phone No.

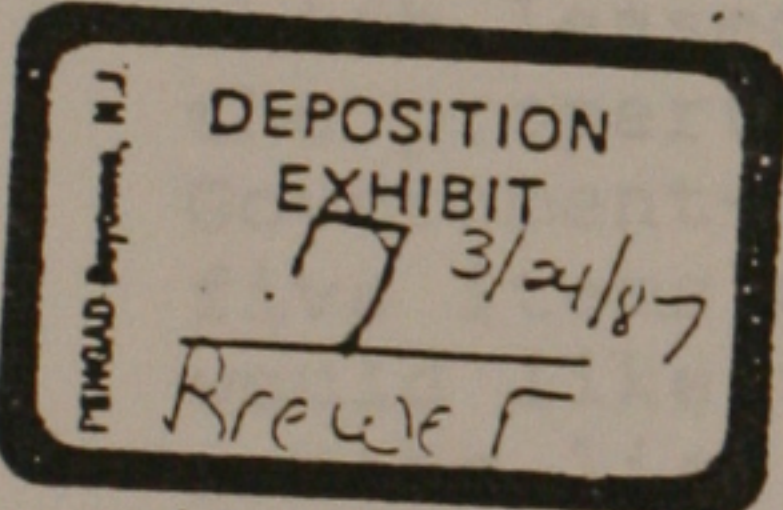
633-4979

5041-102

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA
FPMR (41 CFR) 101-11.706

GPO : 1980 O - 311-156 (17)



SALUS Ex #2

3-27-87

Q

14967

Q

Date 3-1-85

Intimate

Date _____

2 Mr. Brewer - received

copy
this
note

Note and Return

For Clearance

☒ Per Conversation

As Requested

For Correction

Prepare Reply

Circulars

For Your Information

! See Me

Comment

Investigate

!Signature

Coordination

Justify

REMARKS

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FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Pat Frohman, AUSA

2124 G O.S.Ct

Phone No.

Phone No. 633-4979

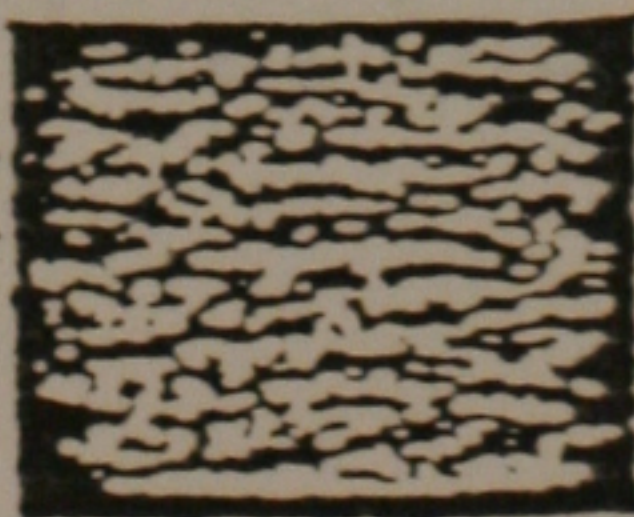
5041-102

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA

FTMR (41 CFR) 101-11.706

★ WFO : 1980-0 - 311-156 (17)



Sample L, #2

As Requested	For Correction	Prepare Reply
Circulate	<input checked="" type="checkbox"/> For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

Re: Inslaw Inc., Bk No. 85-00070

A Hechhead is a copy of what has been filed so far in the Inslaw bankruptcy. There is a long list, and amended list, of creditors, but I do not see Justice claim unless it is well disguised. Therefore under Bankruptcy Rule 30(c)(2) also attached, Justice must file a claim, within a time to be fixed by the Court.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post) Room No.—Bldg.

Pat Frohman, AUSA 21746-0501

Phone No. 570

(c)(2) also attached, Justice must file claim, within a time to be fixed by the Court.

DO NOT use this form as a RECORD of approvals, concurrences, dissents, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Pat Frohman, AUSA

Room No.—Bldg.

2124 G 0.5.01

Phone No.

633-4979

5041-102

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA

FPMR (41 CFR) 101-11.206

5010-102 - 311-156 (17)



SALUS Ex #2

3-27-87

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14967

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DSCooper:deg

Telephone:
(202) 724-7183

Washington, D.C. 20530

February 26, 1985

HAND DELIVER

Mr. Stanley M. Salus
Docter, Docter & Salus
1612 K Street, N.W.
Suite 700
Washington, D.C. 20006

466-7940

Re: In re Inslaw, Inc.,
Bankr. No. 85-0070 (Bankr. D.C.)

Dear Mr. Salus:

To confirm our conversation of yesterday morning, the Government seeks Inslaw's consent to remove the Government-furnished "Prime" computer hardware from debtor's facilities which relates to the Department of Justice contract with Inslaw. That contract expires on March 15, 1985, and the equipment in question would normally be returned to the Government at that time. We would like your cooperation in permitting us to remove a few pieces of the equipment on March 8, 1985, and the remainder of the equipment on or shortly after March 15, 1985.

That equipment was furnished to Inslaw by the Government, which leased the equipment from another contractor, and is not the property of the debtor. I have enclosed a list of the Government-furnished property which we would like to remove. The five items which are denoted with asterisks is the property we would like to remove on March 8, 1985, and the remaining property on the list would be removed on or after March 15, 1985. At your request, I have enclosed excerpts from the contract which refers to the Government-furnished property.

I would appreciate it if you would call me with your response before the end of the day. If we cannot resolve this matter by agreement, I will need to file a motion for relief from the stay in the next few days. I look forward to hearing from you.

Very truly yours,

SALUS Ex. #3
3-27-87

DEAN S. COOPER
Trial Attorney

Commercial Litigation Branch

Enclosures

114551

CALL

Prime System #01 - Components in Possession of INSLAW, Inc.

The following items of government-furnished equipment are currently located at the INSLAW data center - 9602 George Palmer Highway, Lanham Maryland:

<u>Description</u>	<u>Quantity</u>
Prime model 550-II CPU with 2 megabytes (MB) of memory	1
Prime/GE Telenet hardcopy system console & interface cable	1
Prime model 4471 300MB disk drive, with disk, controller, and interface cable	1
Prime model 4472 300MB disk drive, with disk and interface cable	1
Prime model 4522 800/1600 bpi tape drive with controller and interface cable	1
Prime model 3330 600 lpm band printer with unit record controller and interface cable	1
* Data Comm 9600 baud modem, serial # A04900538	1
* Stat Kat 12-port multiplexor, serial # 46603	1
* Prime CBL1469/1470 interface cables for terminals, printers and multiplexors	4

3/5
3/4
When my three cables are from the
Prime to DCA mux

I14552

The following items of government-furnished equipment are currently located at INSLAW's offices at Suite 600, 1125 15th Street, NW Washington, DC.

<u>Description</u>	<u>Quantity</u>
* Data Comm 9600 baud modem, serial # 37461	1
* Stat Kat 12-port multiplexor, serial # 4652	1
Beehive DM5 Plus terminals, serial # 5428 and 5429	2
Hi-G / Durawriter dot matrix printers, serial # 8200578 and 8310492	2
NEC letter quality printer, serial # 541532681	1

I14553

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In Re: INSLAW, INCORPORATED
Debtor

Bankruptcy Case No. 85-00070

Friday, March 27, 1987
Washington, D.C.

Deposition of GREGORY A. McKAIN was taken, pursuant to notice, before Albert J. Gasdor, a Notary Public in and for the District of Columbia, commencing at 11:35 a.m., in the law offices of Docter, Docter and Salus, Suite 700, 1325 G Street, N. W., Washington, D.C.

APPEARANCES:

On behalf of the Debtor:

MICHAEL J. LIGHTFOOT, ESQ.
Dokter, Dokter & SALUS
Suite 700
1325 G Street, N.W.
Washington, D.C.
Phone: (202) 628-6800

On behalf of the Department of Justice:

DEAN S. COOPER, ESQ.
Commercial Litigation Division
U. S. Department of Justice
Room 1212, Todd Building
550 11th Street, N.W.
Washington, D.C. 20530
Phone: (202) 724-7448

I N D E X

Friday, March 27, 1987

Washington, D.C.

DEPONENT:

DIRECT

CROSS

Gregory A. McKain

3

--

E X H I B I T S

FOR IDENTIFICATION

McKain No. 1 27

McKain No. 2 39

McKain No. 3 43

McKain No. 4 50

Deponent's Signature Page 61

1 P-R-O-C-E-E-D-I-N-G-S

2 Whereupon,

3 GREGORY A. McKAIN

4 was called as a witness, and having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. COOPER:

8 Q. Would you state your name for the record,
9 please.

10 A. Gregory A. McKain.

11 Q. What is your residence address?

12 A. 991 Mount Holly Drive, Annapolis Maryland,
13 21401.

14 Q. Mr. McKain, where are you currently
15 employed?

16 A. Inslaw, Incorporated.

17 Q. How long have you been employed at Inslaw?

18 A. About seven years and three weeks.

19 Q. Approximately late 1979?

20 A. March first of 1980.

21 Q. What is your current position at Inslaw?

22 A. I am a software manager in the product

development and installation group. Approximately February

Q. Inslaw filed for bankruptcy in approximately February of 1985; is that correct?

A. Yes.

Q. Were you aware of that when that happened?

A. Yes.

Q. What was your position at Inslaw at that time?

A. I was then technical manager and also the project manager for the project to automate the U.S. Attorneys offices.

MR. LIGHTFOOT: Say that again.

THE WITNESS: I was technical manager as well as the project manager at that point. I had assumed those duties toward the end of the contract.

BY MR. COOPER:

Q. Your role as technical manager and project manager related to Inslaw's performance under the contract that Inslaw had with the Department of Justice, Executive Office of U.S. Attorneys?

A. Yes.

Q. Who at the Department of Justice did you

1 primarily have contact with in approximately February
2 of 1985?

3 A. Either Jack Rugh or Mike Snyder, depending
4 upon the nature of a problem. I would either call
5 Mike or Jack. Jack was technical and Mike was
6 administrative.

7 Q. Can you recall what your salary was in 1985
8 when you were the technical and project manager?

9 A. It may have been close to \$35,000.

10 Q. Per year?

11 A. Yes.

12 Q. Since February of 1985, what other positions
13 or promotions did you obtain since that time at
14 Inslaw?

15 A. The only real promotion was to software
16 manager.

17 Q. Your current position?

18 A. My current position.

19 Q. When did you obtain that promotion?

20 A. It was in July of 1986, I believe.

21 Q. Did that promotion take with it a salary
22 increase as well?

1 A. Yes.

2 Q. Prior to that salary increase in July of
3 1986, was your salary approximately \$35,000?

4 A. No, it was higher then. I received an
5 increase in about July of 1985.

6 Q. In July of 1985, do you recall how much you
7 were earning?

8 A. Mid-40's.

9 Q. Was that about \$43,000?

10 A. Actually, I think I went from \$35,000 to
11 \$40,000 to \$45,000 to my current salary.

12 Q. So you were earning \$45,000 as of July 1985?

13 A. That is correct.

14 Q. How about in July of 1986? What was the
15 salary increase that you received upon becoming the
16 software manager?

17 A. It was increased to \$50,000.

18 Q. Is your salary \$50,000 as of the present
19 time?

20 A. Yes.

21 Q. Following Inslaw's bankruptcy filing, were
22 you issued any stock in the company?

1 A. No. these two sites instances where the

2 Q. Do you hold any stock in the company?

3 A. No, I do not.

4 Q. Have you been offered any profit-sharing
5 arrangement in the company?

6 A. No. you at involved during February of 1985

7 Q. In approximately February of 1985, what task
8 were you working on in connection with the Justice
9 Department contract? minimal nature in that if they had

10 A. We were wrapping up the last two sites that
11 needed to have software delivered and the delivery was
12 waived and the only thing we needed to supply was a
13 tape of finished software product as well as
14 documentation. it was a meeting held at Inslaw

15 Q. What were the last two sites? present. I am

16 A. One was the Virginia district which was
17 headquartered in Alexandria and I think the second one
18 was in Ohio. I think it was Cleveland or Columbus. I
19 am not sure.

20 Q. Did this pertain to the installation of
21 PROMIS on a computer as opposed to a word processor? in

22 A. Yes.

1 Q. Were these two sites instances where the
2 computer was actually located at the U.S. Attorneys'
3 office?

4 A. As far as I know, it was at the U.S.
5 Attorney's Office.

6 Q. Were you at involved during February of 1985
7 in providing time-sharing support to any of the U.S.
8 Attorney's offices?

9 A. Only in a minimal nature in that if they had
10 an application problem, I would handle it, but not if
11 it was hardware or communications-related.

12 Q. Do you recall when you first became aware
13 that Inslaw had filed for bankruptcy?

14 A. Yes, it was a meeting held at Inslaw
15 attended by all the employees who were present. I am
16 not sure of the exact date but sometime in early
17 February of 1985.

18 Q. Was it on the date that Inslaw filed for
19 bankruptcy?

20 A. I believe it was on the date. It was an
21 afternoon meeting and I think the filing took place in
22 the morning.

1 Q. Do you have any recollection of having any
2 concern or impression prior to Inslaw's bankruptcy
3 filing that Inslaw might go into bankruptcy?

4 A. Not really. I had no belief that we would
5 file for bankruptcy. Times were not high on the hog
6 but we had never filed before, and I had been through
7 ups and downs before so I had no real belief they were
8 filing for bankruptcy protection.

9 Q. Prior to February of 1985, do you recall
0 numerous ups and downs concerning the company's
1 financing?

2 A. A few people were let go at different points
3 in time. I don't recall dates.

4 Q. Do you recall the company not being able to
5 meet a payroll because of a cash shortage?

6 A. I personally never missed one.

7 Q. Do you remember prior to February, 1985
8 employees were instructed to accelerate the billing of
9 time to submit vouchers on contracts to improve cash
0 flow?

1 A. No, I was not aware of anything of that
2 nature.

1 Q. Who participated in that meeting in early
2 February, 1985 at which you learned of Inslaw's
3 bankruptcy filing?

4 A. There was a lawyer present. I believe it
5 was Glenn Gerstel who just spoke briefly about what
6 Chapter 11 would mean to the company and what actions
7 would be taking place over the next period of months
8 or so, fairly general terms, just someone will file
9 something and respond and it will go back and forth
10 for a while with the ultimate goal being the
11 reorganization of the company.

12 Q. Did anyone else speak at that meeting?

13 A. I think Mr. Gerstel and maybe Bill Hamilton
14 introduced him. I don't recall another speaker.

15 Q. Other than introducing Mr. Gerstel, did Mr.
16 Hamilton say anything at that meeting?

17 A. I can't recall if he said anything.

18 Q. To the best of your recollection, that was
19 the day of or the day after Inslaw's bankruptcy
20 filing?

21 A. It was very close to the time of filing.

22 Q. Was anything discussed during that meeting

1 in early February of 1985 regarding the Justice
2 Department contract?

3 A. No, not not to my recollection.

4 Q. Do you recall any discussions prior to
5 February, 1985 regarding the Justice Department
6 contract and allegations of bias concerning Justice
7 Department officials?

8 A. Discussions in a group or just being aware
9 of possible conflict?

10 Q. Did you ever discuss allegations of bias
11 with any other employee?

12 A. No.

13 MR. LIGHTFOOT: Isn't this outside the
14 scope?

15 MR. COOPER: I think it is material. I want
16 to know what information Mr. McKain had and what kind
17 of discussions he had about the allegations of bias
18 solely to establish a basis that might create a bias
19 on his part. I am not going to get into it too
20 deeply.

21 BY MR. COOPER:

22 Q. Have you ever had discussions with Mr.

1 Hamilton regarding allegations of bias on the part of
2 Justice Department officials?

3 A. I don't know about bias on the part of
4 officials. I was aware of payments, I believe, to the
5 computer center, a conflict, and some kind of method
6 that we were supposed to be paid for time-sharing.

7 Q. You were advised there was some kind of
8 contractual dispute?

9 A. Yes.

10 Q. Did Mr. Hamilton ever tell you Brick Brewer
11 was biased because he had fired Brick Brewer?

12 A. No.

13 Q. Did Mr. Hamilton tell you that he didn't
14 like Jack Rugh?

15 A. I didn't know Brick was a former employee
16 until after the bankruptcy was filed.

17 Q. How did you learn of that?

18 A. I don't even know who the person was.
19 Somebody said Brick worked at Inslaw.

20 Q. Has there been a lot of discussion at Inslaw
21 since the bankruptcy filing regarding the allegations
22 of bias or the lawsuit that Inslaw has filed against

1 the government?

2 A. Besides updating company personnel on the
3 status of Chapter 11, no, not really.

4 Q. Are there periodic updates to the personnel
5 regarding the status of Inslaw's bankruptcy filing?

6 A. Generally, we may have a meeting for a
7 birthday or whatever and Bill will bring people up to
8 date, this has been filed or extensions granted by the
9 Bankruptcy Court, the right of exclusivity and that
10 was the main concern of the employees.

11 Q. Approximately how frequently do such
12 meetings occur?

13 A. That we are informed of anything involving
14 bankruptcy?

15 Q. Yes, that is correct.

16 A. Maybe once every other month or maybe once
17 every three months. We have regular meetings.

18 Q. At any of those meetings, has Mr. Hamilton
19 or anyone else discussed the specific allegations of
20 bias regarding the Justice Department officials or
21 employees?

22 A. No, I think mainly the lack of funds

1 supplied to Inslaw on the contract.

2 Q. Do you ever recall having the impression or
3 having been informed that the very survival of Inslaw
4 is dependent upon Inslaw winning its lawsuit against
5 the Department of Justice?

6 A. No, I don't think that has ever been
7 presented to me.

8 Q. Do you recall following Inslaw bankruptcy
9 filing having discussions with Justice Department
10 employees regarding Inslaw's ability to come out of a
11 Chapter 11 reorganization?

12 A. Following the filing?

13 Q. Following the filing.

14 A. Yes.

15 Q. Approximately what is the first meeting or
16 conversation that you recall with the Justice
17 Department employee regarding the bankruptcy filing or
18 Inslaw's ability to survive bankruptcy?

19 A. It was a call from Jack Rugh which shortly
20 followed our filing, probably within days of the
21 filing.

22 Q. That was the very first person at the

1 Justice Department that you spoke with concerning the
2 bankruptcy matter?

3 A. Yes.

4 Q. You are absolutely certain of that?

5 A. Yes.

6 Q. You have searched your notes? Have your
7 notes been made available to you from that period to
8 review?

9 A. I have not reviewed my notes for that
10 period.

11 Q. What have you reviewed to prepare for giving
12 testimony today?

13 A. Mainly my telephone log and conversation
14 with Jack Rugh.

15 Q. A single-page document?

16 A. Yes.

17 Q. Have you requested an opportunity to look at
18 any of your other documents from this period?

19 A. No.

20 Q. Was it your practice during that period to
21 keep a telephone log that recorded all of your
22 conversations that you had?

1 A. I tried to record every call I had with
2 Justice regarding the contract.

3 Q. Do you recall Mike Snyder having discussed
4 with you the Inslaw bankruptcy filing following
5 Inslaw's filing for bankruptcy?

6 A. Not the bankruptcy. He requested a list of
7 creditors. I took no action because I did not feel it
8 was my responsibility to supply him with that
9 information.

10 Q. Did that conversation occur before the
11 conversation request of Jack Rugh?

12 A. Just after.

13 Q. Did he request you send him a copy of the
14 creditors' list?

15 A. Or if I could obtain a list of creditors for
16 him.

17 Q. Do you have any recollection of him saying
18 anything else?

19 A. No, it was a very short conversation--how
20 are you doing? Can you get me this information? I
21 said I will see. Thank you.

22 Q. Your recollection today is that call did not

1 occur until after Mr. Rugh's conversation with you?

2 A. Yes.

3 Q. Do you have any recollection of Mr. Snyder
4 ever stating to you that in his opinion or in the
5 opinion of others at the Executive Office of U.S.
6 Attorneys that Inslaw couldn't make it in a Chapter 11
7 and would be liquidated?

8 A. No.

9 Q. Did you know the difference between a
10 Chapter 11 and Chapter 7 in February of 1985?

11 MR. LIGHTFOOT: I will object on the grounds
12 it is not specific enough as to what portion of
13 February.

14 BY MR. COOPER:

15 Q. Did you learn of the difference of a Chapter
16 11 and Chapter 7 in the meeting of Mr. Gerstel?

17 A. No, I was aware of that prior to that, very
18 superficially.

19 Q. Your understanding is a Chapter 11 is what?

20 A. The company proceeds as it has been. It is
21 not a locking of the doors situation.

22 Q. Chapter 7 is what?

1 A. The doors are locked and creditors are paid
2 off.

3 Q. Can you describe to the best of your
4 recollection your conversation with Mr. Rugh.

5 First of all, when did it occur?

6 A. Within a short period of time following our
7 filing for Chapter 11.

8 Q. Can you put your finger on the precise date?

9 A. I could not give a precise date.

10 Q. Was it before or after the meeting with Mr.
11 Gerstel?

12 A. I think it was after the meeting with Mr.
13 Gerstel.

14 Q. Do you recall how long after?

15 A. I think it may have been the day after.
16 There were several phone calls following the filing,
17 within a day or two, people wondering if we are going
18 to stay at Inslaw.

19 Q. Do you recall the date that Inslaw filed for
20 bankruptcy?

21 A. If I had a calendar of that year I could
22 probably figure it out. I know it was a Thursday in

1 early February. Also did Mr. Rugh said?

2 Q. What was the nature of the conversation with
3 Mr. Rugh? Did you call him or did he call you?

4 A. He called me.

5 Q. Had you called Mr. Rugh prior to that? Was
6 he returning a call to you?

7 A. No. covered what would be necessary for me to

8 Q. So Mr. Rugh was just calling you? depending

9 A. There was very little activity on the
10 project since it was very much towards the end of the
11 contract. contract with the Justice Department.

12 Q. What happened during that call? Rugh, had

13 A. He said to me, "We have talked to trustees
14 who said Chapter 11 won't go." Justice before?

15 Q. That is the first thing he said to you?

16 A. Those were basically the first words out of
17 his mouth and we would probably have to go to Chapter
18 11 within 30 to 60 days. our filing Chapter 11.

19 Q. He said you would have to go to Chapter 11
20 within 30 to 60 days, or was that your impression?

21 A. It was my impression that is what he found
22 out from whatever trustees he talked to. work here. It

1 Q. What else did Mr. Rugh said?

2 A. The rest of the conversation dealt with the
3 possibility of me being employed by the Justice
4 Department.

5 Q. What specifically did he say in connection
6 with your potential employment?

7 A. He covered what would be necessary for me to
8 be employed by the Justice Department, that depending
9 upon the size of the contract I would sign, anything
10 under \$25,000 could be arranged for a maximum
11 six-month contract with the Justice Department.

12 Q. Prior to that discussion with Mr. Rugh, had
13 you ever discussed the possibility of employment or a
14 contract with the Department of Justice before?

15 A. Yes.

16 Q. When did you first begin to discuss that?

17 A. That is very hard to be exact, but it was at
18 least two years prior to our filing Chapter 11.

19 Q. Was that a discussion that you had
20 initiated?

21 A. No. Initially, it was do I feel like
22 leaving? Do you feel you would like to work here. It

1 not only came from Jack Rugh but various employees
2 within the Department of Justice.

3 Q. Did you have any interest in that contract
4 at that time?

5 A. Maybe initially, yes, but by the end of the
6 contract, I had been five years on the same project
7 and I really had no desire, if I could help it, to
8 continue on that same software application.

9 Q. Am I correct in saying that when the
10 discussions were first initiated, you were interested
11 at least for a period during which those discussions
12 occurred?

13 A. Yes.

14 Q. What point was it that you were no longer
15 interested?

16 A. I don't think I at any one point became no
17 longer interested in working there. My preference for
18 working there, however, went down considerably towards
19 the end of the contract, just when I felt tired of
20 working on the same thing and dealing with the same
21 people.

22 Q. At the end of March, you were no longer

1 interested in working for the government when the
2 contract terminated? I am trying to place a time.

3 A. There was no real specific change.

4 Q. Was it before or after the bankruptcy
5 filing?

6 A. Before.

7 Q. So sometime before the bankruptcy filing,
8 you in your own mind were no longer interested in a
9 contract with the government?

10 A. My interest was greatly reduced from what it
11 had been.

12 Q. Do you recall having told Mr. Rugh or any
13 other employee of the Justice that you were not as
14 interested in employment or a contract as much as you
15 had been before?

16 A. No, it is my personal policy not to say I am
17 not interested, since I don't know what might happen
18 next week.

19 Q. There were conversations before this
20 conversation with Mr. Rugh in February of 1985 that
21 perhaps continued over a period of at least two years
22 where you had discussed with the Justice Department

1 the possibility of employment or a contract; is that
2 correct? During his telephone call?

3 A. I would say full-time employment, not for a
4 contract but for full-time employment. some

5 Q. Was it your understanding that you wouldn't
6 be working on providing maintenance?

7 A. At which point in time, prior to my call
8 from Jack Rugh? Is you that the Department of Justice

9 Q. Was there a time that you were talking with
10 the Justice Department about either as an employee or
11 as a contractor providing maintenance services to the
12 Department of Justice? sal?

13 A. The only time that was brought up was in such
14 Jack Rugh's phone call. Jack Rugh.

15 Q. That was the first time? conversations with the

16 A. That is the first time maintenance was
17 discussed or a specific list of duties was discussed.

18 Q. What do you recall before that call you your
19 would have been doing? the trustees was in February of

20 A. Basically, in my capacity in my work at
21 Inslaw, technical supervision and installing projects.

22 Q. What did Mr. Rugh tell you about stee would

1 maintenance?

2 A. During his telephone call?

3 Q. Yes.

4 A. Not much specifically except some
5 maintenance and retailoring and some maintenance in a
6 six-month contract.

7 Q. Do you recall Mr. Rugh mentioning in any
8 conversation with you that the Department of Justice
9 had asked Inslaw to submit a proposal to the
10 government for performing maintenance services for the
11 period after March of 1985 but that Inslaw had not
12 submitted such a proposal?

13 A. Not to my recollection. I was aware of such
14 activity but not through Jack Rugh.

15 Q. Have you ever had any conversations with the
16 United States trustee?

17 A. No.

18 Q. What is your best recollection of what your
19 knowledge regarding the trustees was in February of
20 1985?

21 A. At the time of that call when he mentioned
22 the word trustee, I had no idea what a trustee would

1 be.

2 Q. Do you have a recollection that you really
3 didn't have any idea what he was talking about?

4 A. I knew trustee as in maybe a released
5 prisoners trustee and I knew it was some type of
6 custodial time situation, but I had no direct
7 knowledge of any trustee that would have been involved
8 with Inslaw, so I was kind of surprised.

9 Q. Were you confused by his call?

10 A. Not really confused. I was concerned by his
11 call.

12 Q. Your recollection is that the very first
13 thing he said in placing that call after perhaps
14 saying hello was that we have spoken to the trustees
15 and they have said that Inslaw cannot make it in
16 Chapter 11 and will probably become a Chapter 7?

17 A. Yes.

18 Q. Were you surprised by the abruptness of that
19 statement?

20 A. Yes.

21 Q. How long did that call with Mr. Rugh last?

22 A. No more than 10 or 15 minutes. It was a

1 fairly short call. He gave me the particulars as to
2 what would need to happen for me to have a contract
3 with the Justice Department and what would be
4 involved, and that was basically about it.

5 Q. Did you tell him at that time you were not
6 interested in a contract with the Justice Department?

7 A. No.

8 Q. You were interested?

9 A. Particularly when he said we would not
10 survive Chapter 11.

11 Q. Did you receive another call subsequent to
12 that call from Mr. Rugh following up on his offer of
13 employment?

14 A. I can't specifically give a date. I kind of
15 remember talking to him after that and my answer was,
16 well, I am Inslaw and I will just stay at Inslaw.

17 Q. What did Mr. Rugh say?

18 A. Fine, thank you, because one of the
19 provisions on the six-month contract was they would be
20 able to go to sole source due to my extensive
21 knowledge of the contract and they could not do that
22 as long as Inslaw existed.

1 Q. He explained this to you during the second
2 call?

3 A. No, during the first call. Inslaw insisted
4 they could not go sole source.

5 Q. Had he told you similar things in the prior
6 two-year period when you were discussing the
7 possibility of an employment contract?

8 A. No. At that time, it was all discussions
9 regarding full-time employment.

10 MR. COOPER: Let me mark McKain Exhibit No.
11 1, a copy of what appears to be notes in your
12 handwriting. I will ask that be marked.

13 [McKain Exhibit No. 1 marked for
14 identification.]

15 BY MR. COOPER:

16 Q. Do you recognize the handwriting on that
17 Exhibit?

18 A. Yes.

19 Q. What is McKain Exhibit 1?

20 A. This is the log of my telephone conversation
21 with Jack Rugh that day.

22 Q. You say a log. Is this a log or notes?

1 A. This was more a personal note because it was
2 not really project-related.

3 Q. You kept this separate from your project
4 notes?

5 A. Yes. I had a blank yellow pad on my desk
6 and, at that time, I was conditioned every time I
7 talked to someone from Justice to get out my pencil
8 and write down notes.

9 Q. Why was that?

10 A. Probably due to the intensity of the
11 project. We were implementing various sites close on
12 the heels of one another and keep a log site by site
13 and date by date and whether it was a software
14 problem, a personnel problem, just a general question
15 on the use of the application, I like to keep a
16 chronological log of who not only in the Washington
17 office of the Department of Justice called.

18 Q. Were you also instructed to keep a log of
19 what Justice Department people said because there was
20 a dire need to build a record regarding allegations of
21 bias?

22 A. No.

1 Q. Can you tell me at what time this call was
2 received?

3 A. 9:45 a.m. Could you check that?

4 Q. That would have been a.m.?

5 A. Yes.

6 Q. You don't know what date?

7 A. No.

8 Q. Have you made any efforts to ascertain what
9 date this occurred?

10 A. I believe it was the day following the
11 filing for Chapter 11.

12 Q. Have you ever seen a different copy of this
13 where you could tell me what those notations are above
14 that first line? It looks like something was circled
15 there.

16 A. That was a note that Jack Rugh would be at
17 the Pentagon for two weeks starting Monday. If I had
18 the note that it was starting Monday, that would
19 almost pinpoint us to the day or two of filing the
20 Chapter 11.

21 Q. Where is the original of this note?

22 A. It may be in Inslaw's files.

1 MR. COOPER: I would request and restate for
2 the record that I be provided with the original of
3 this handwritten note. Could you check that?

4 MR. LIGHTFOOT: Sure, it may be over here.

5 They can't find the original.

6 MR. COOPER: They can't find it or they
7 don't know?

8 MR. LIGHTFOOT: They can't find it.

9 MR. COOPER: During the off the record
10 portion, counsel has just related to me in response to
11 my request that the original could not be found. Is
12 that correct, Mr. Lightfoot.

13 MR. LIGHTFOOT: Yes.

14 MR. COOPER: Has a search been performed to
15 ascertain that?

16 MR. LIGHTFOOT: After I talked to you at ten
17 o'clock this morning, I asked them to check to see if
18 they could find the original, and I was just told me
19 couldn't find the original. That is the state of my
20 knowledge.

21 BY MR. COOPER:

22 Q. Mr. McKain, at the top of the page there,

1 were you keeping a verbatim account of what Mr. Rugh
2 said?

3 A. No, not particularly. He said "we" talked
4 to trustees and I translated that to "they" talked to
5 trustees.

6 Q. Other than that, do you keep notes in a
7 verbatim form or do you kind of summarize?

8 A. I attempt to summarize what has been said.

9 Q. And these are summaries in part?

10 A. Probably except for the first two lines and
11 that is practically verbatim.

12 Q. How do you know that?

13 A. I recall that. It hit me like a ton.

14 Q. What do those first two lines say, first of
15 all?

16 A. They talked to trustee who say Chapter 11
17 won't go; probably Chapter 7, 30 to 60 days.

18 Q. Why is trustees circled?

19 A. Because I wondered what a trustee had to do
20 with Inslaw and not survive Chapter 11.

21 Q. Do you recall whether you circled trustees
22 at the time that you were writing these notes?

1 A. Yes, I did.

2 Q. How about the 30 to 60 days?

3 A. That was my timeframe. If we are involved,
4 I want to have a resume prepared and do some job
5 hunting.

6 Q. Your clear recollection is trustees said
7 Chapter 11 won't go, probably Chapter 7?

8 A. I think were some goings-on mixed in there
9 in between which I did not write down.

10 Q. Did Mr. Rugh to the best of your
11 recollection express his personal opinion that Inslaw
12 could not reorganize?

13 A. Not particularly at that point.

14 Q. Do you ever remember Mr. Rugh expressing his
15 personal opinion that Inslaw could not reorganize?

16 A. No.

17 Q. What does the next line say?

18 A. Six-month contract for me, responds to RFP,
19 below 25K, not so much of a problem. They could go
20 sole source since I know most of what happened in
21 contract. Regarding 171 form would not be required.
22 At that point is when he told me as long as Inslaw

1 exists, a sole source cannot be used to obtain my
2 services. He did a statement of work that would be
3 involved. I would have to have a letter to Pete
4 Videnieks to respond to and there was some question
5 whether there would be a fixed price contract or an
6 hourly contract. He then detailed what would probably
7 be involved in the training, tailoring and maintenance
8 operation.

9 Q. Did you state your recollection was that
10 this call lasted approximately 15 minutes?

11 A. No longer than 15 minutes.

12 Q. Is it possible it was shorter than 15
13 minutes?

14 A. It could have been 10 minutes.

15 Q. What does this mean, "MS called"?

16 A. 2/15/85 and he requested a list of
17 creditors.

18 Q. When was that?

19 A. After Mr. Rugh's call.

20 Q. Why did you put that on the notes of Mr.
21 Rugh's call?

22 A. The pad was still on my desk from that call.

1 Q. Do you recall how long after Mr. Snyder's
2 call you spoke with Mr. Rugh?

3 A. Mr. Rugh called first. Then I spoke to Mr.
4 Snyder.

5 Q. Does this refresh your recollection that the
6 call with Mr. Rugh occurred before February 15 of
7 1985?

8 A. Yes, sir.

9 Q. Do you recall whether or not Michael Snyder
10 called you on the same day you spoke with Mr. Rugh?

11 A. No, it was definitely after the day I had
12 spoken to Mr. Rugh.

13 Q. How many days after?

14 A. I have no recollection. The pad was still
15 on my desk so it had to be within a week after I
16 talked to Mr. Rugh.

17 Q. Your recollection is the pad was still on
18 your desk and still turned to that page?

19 A. Yes, I think that is why I circled that Mike
20 Mike Snyder called because I wanted to keep it
21 separate.

22 Q. Your recollection is there was a period of

1 two to three days in between Mr. Rugh's call and Mr.
2 Snyder's call?

3 A. Yes.

4 Q. That would have put Mr. Rugh's call on the
5 12th or 13th?

6 MR. LIGHTFOOT: He said it occurred before
7 that date, not on either of those dates. I think you
8 are mischaracterizing his testimony. I think the
9 confusion is Mr. McKain indicated it occurred before a
10 period of two to three days before the Mike Snyder
11 phone call and you are placing it on one of those two
12 dates.

13 MR. COOPER: That is a fair objection.

14 BY MR. COOPER:

15 Q. What did you do after having spoken with Mr.
16 Rugh? Had you spoken with anyone about Mr. Rugh's
17 call?

18 A. Yes.

19 Q. Who?

20 A. Mr. Hamilton.

21 Q. When did you do that?

22 A. Immediately.

1 Q. What did you say to Hamilton?

2 A. That I just talked to Jack Rugh who told me
3 we weren't going to make it and I wanted to know from
4 Mr. Hamilton, are we going to make it.

5 Q. Is it fair to say you confronted Mr.
6 Hamilton?

7 A. Yes.

8 Q. That was minutes after your call?

9 A. Yes.

10 Q. That was in the morning?

11 A. Yes.

12 Q. What else did you say or what did Mr.
13 Hamilton say after you told him that?

14 A. He just reassured me that it is impossible
15 almost, too many things need to happen within 30 to 60
16 days, that he was confident the company would not fold
17 in that time period.

18 Q. Did you say anything more to him?

19 A. I just reiterated my concern that I be told
20 really what is happening and not have a snow job laid
21 on me--yes, it is fine--and one day I come in to work
22 and the doors are locked.

Q. What did he say to that?

A. He said we were not going to fold.

Q. Were you reassured?

A. I was somewhat disturbed there was someone from outside the company said you are going to fold within this timeframe, yet employees as a whole and myself personally after I confronted Mr. Hamilton was assured we would not fold.

Q. Did Mr. Hamilton ask you to write a memorandum to him outlining what Jack Rugh had said to you or anything like that?

A. Not at that meeting, no.

Q. Did you tell Mr. Hamilton after your conversation with Jack Rugh that you recall Jack Rugh having said he had spoken with the trustees?

A. I think I told him that at the original meeting shortly after my conversation with Mr. Rugh.

Q. That was the meeting right after you spoke with Mr. Rugh?

A. Right.

Q. You think you told Mr. Hamilton that? What exactly did you say to him?

1 A. I believe I said, "Jack Rugh just called me
2 and said they talked to trustees and that we are going
3 to fold. I want you to tell me what is going on at
4 this point."

5 Q. After that meeting with Mr. Hamilton, were
6 you subsequently asked to do anything regarding that
7 conversation or did you have other conversations
8 regarding the matter that Mr. Rugh had raised with
9 you?

10 A. No. I am not sure of the timeframe, maybe
11 as much as a year after my initial meeting with Mr.
12 Hamilton regarding my call from Mr. Rugh, I was asked
13 by Mr. Hamilton to prepare a memo outlining my
14 discussions with Mr. Rugh and including a copy of my
15 notes from that discussion.

16 Q. Why did Mr. Hamilton tell you that he needed
17 that?

18 A. He just felt that the trustees were a key
19 point and it may be helpful in our Chapter 11 lawsuit.

20 Q. This was in May of 1986?

21 A. Yes, that sounds right.

22 MR. COOPER: I would like you to mark as

1 McKain Exhibit No. 2 a document to Leigh S. Retiner,
2 with the law firm of Dickstein, Shapiro and Morin,
3 from Gregg McKain.

4 [McKain Exhibit No. 2 marked for
5 identification.]

6 BY MR. COOPER:

7 Q. Mr. McKain, did you author this document?

8 A. Yes.

9 Q. Did anybody review this document before it
10 was sent to Mr. Retiner?

11 A. Probably Mr. Hamilton. It was typed by his
12 secretary.

13 Q. Do you remember Mr. Hamilton making any
14 revisions?

15 A. No, he did not.

16 Q. Did you discuss with Mr. Hamilton or anyone
17 else regarding what should be in your memorandum to
18 Mr. Retiner?

19 A. No. He basically requested I do a memo and
20 outlined the conversation.

21 Q. Did he tell you to mention the stuff about
22 the trustees?

1 A. No.

2 Q. Do you know whether this memo was ever sent
3 to Mr. Retiner?

4 A. I have no idea.

5 Q. Would that have been Mr. Hamilton who would
6 send it to Mr. Retiner?

7 A. Or his secretary.

8 Q. So you prepared this memo and gave it to Mr.
9 Hamilton?

10 A. Yes.

11 Q. Do you remember preparing the memo on May 9?

12 A. Within that timeframe. I am not sure of the
13 exact date but that was the date it was typed up by
14 the secretary.

15 Q. Did you actually prepare a longhand version
16 of this or is this something you actually dictated?

17 A. Sometimes I will key it into the computer.
18 My handwriting will attest to not easy translation.

19 Q. Do you recall if you keyed in this
20 particular memo?

21 A. I think it was in longhand.

22 Q. That is why Mr. Hamilton's secretary had to

1 type it?

2 A. Yes.

3 Q. Do you know where the longhand notes are?

4 A. No, I don't know where they would be.

5 Q. Do you generally throw them out?

6 A. When it is proofread against the draft, I
7 discard it.

8 Q. Do you recall specifically discarding the
9 draft in this instance?

10 A. I can't specifically recall.

11 Q. In May of 1986, where would any files that
12 you had for that period reside?

13 A. They were collected at some point in time
14 and I am not sure exactly when all my materials for
15 the contract and my other logs, et cetera, were turned
16 over to personnel.

17 Q. How about any personal notes you had
18 concerning the Department of Justice or job offers
19 that they made to you?

20 A. I really don't have any personal notes.

21 MR. COOPER: Counsel, I would request the
22 files be searched to determine whether or not any

1 notes exist or other drafts of the May 9, 1986
2 memorandum.

3 BY MR. COOPER:

4 Q. In the second paragraph of McKain Exhibit 2,
5 it states, "As indicated on the first two lines of
6 these notes, someone had spoken to 'trustees'
7 regarding INSLAW's Chapter 11 status." Is that a
8 fair characterization?

9 A. Yes.

10 Q. You didn't know who the someone was?

11 A. No. He just said "we" during the course of
12 my conversation with him. He did not say I talked to
13 trustees. He said "we" talked to trustees.

14 Q. Then it goes on to state "and was informed
15 that INSLAW would not survive Chapter 11 and would
16 enter Chapter 7 bankruptcy within 30 to 60 days." Is
17 that your recollection as to what your notes reflected
18 of your conversation with Mr. Rugh?

19 A. Yes.

20 Q. And the third paragraph also reflects your
21 recollection from your notes?

22 A. Yes.

1 Q. Had you had any subsequent conversations
2 with Mr. Hamilton or anyone else concerning the
3 conversation that you had with Mr. Rugh?

4 A. No, not really.

5 Q. Do you recall having a conversation with Mr.
6 Rugh on February 21, 1985 regarding the possibility of
7 accepting a contract with the Department of Justice
8 for PROMIS software support?

9 A. No.

10 MR. COOPER: I ask to mark as McKain Exhibit
11 No. 3 a memorandum that was prepared by Jack Rugh.

12 [McKain Exhibit No. 3 marked for
13 identification.]

14 [Brief recess.]

15 BY MR. COOPER:

16 Q. Mr. McKain, have you ever seen McKain
17 Exhibit 3 before?

18 A. Yes.

19 Q. When have you seen that?

20 A. Mr. Hamilton showed it to me. I can't be
21 sure of the timeframe.

22 Q. Was it recently, a long time ago, when did

1 he show it to you?

2 A. At least a month ago, probably more than a
3 month.

4 Q. Sometime after the litigation was filed?

5 A. Yes.

6 Q. Did Mr. Hamilton mention it was a document
7 Inslaw obtained during discovery from the government
8 in the bankruptcy litigation?

9 A. I am not sure of the source of the document.

10 Q. What did he ask you to do when he showed you
11 the document?

12 A. He said, "Does this parallel what you
13 reported?"

14 Q. What did you say to him?

15 A. I said not exactly.

16 Q. In which respect doesn't it parallel what
17 you reported?

18 A. I don't really think after our initial
19 filing I had any discussions with Jack Rugh regarding
20 a small contract. I think my discussion that I
21 recorded was the last real contact I had regarding the
22 possibility. I never followed up from that point to

1 he show it to you?

2 A. At least a month ago, probably more than a
3 month.

4 Q. Sometime after the litigation was filed?

5 A. Yes.

6 Q. Did Mr. Hamilton mention it was a document
7 Inslaw obtained during discovery from the government
8 in the bankruptcy litigation?

9 A. I am not sure of the source of the document.

10 Q. What did he ask you to do when he showed you
11 the document?

12 A. He said, "Does this parallel what you
13 reported?"

14 Q. What did you say to him?

15 A. I said not exactly.

16 Q. In which respect doesn't it parallel what
17 you reported?

18 A. I don't really think after our initial
19 filing I had any discussions with Jack Rugh regarding
20 a small contract. I think my discussion that I
21 recorded was the last real contact I had regarding the
22 possibility. I never followed up from that point to

1 call him back to say yes or no, I would like to be
2 employed.

3 Q. So you are saying that you never called Mr.
4 Rugh?

5 A. Right.

6 Q. Is there something about McKain Exhibit 3--

7 A. I know my note on Jack Snyder is after Jack
8 Rugh's call. This is dated February 21. I never
9 talked to him on that day.

10 Q. Is your timing of the Jack Rugh calling
11 based primarily on your Mike Snyder note?

12 A. No, although I know that occurred after I
13 spoke to Jack Rugh.

14 Q. Because you remember that?

15 A. Yes.

16 Q. You have an independent recollection of when
17 the Jack Rugh call occurred in terms of time?

18 A. I think it was sometime prior to Jack going
19 to the Pentagon because I asked him can I get you any
20 time and he said I will be at the Pentagon for two
21 weeks starting Monday, so it was after we filed before
22 that particular Monday.

1 Q. Referring to McKain Exhibit 3, you have
2 mentioned the date is different. Do you recall having
3 another conversation with Mr. Rugh about a small
4 contract, accepting a contract for PROMIS software
5 support?

6 A. Not to the degree that we discussed it on
7 this day.

8 Q. But you did discuss it again with Mr. Rugh?

9 A. Not since this conversation. We had
10 conversations previous to this discussion on my
11 employment at Justice.

12 Q. I believe your testimony was that prior to
13 that discussion with Mr. Rugh that you testified to,
14 which occurred after Inslaw's bankruptcy filing, you
15 had never discussed a small contract with the
16 Department of Justice but that you had been discussing
17 employment. Isn't that correct?

18 A. Mainly full-time employment.

19 Q. Had you ever discussed the possibilities of
20 accepting a small contract with the Department of
21 Justice in any discussion with Mr. Rugh which occurred
22 after the discussion that you have testified to?

1 A. Not after.

2 Q. So the only time you ever discussed the
3 possibility of a small contract with the Justice
4 Department was in that single telephone call where
5 your recollection is Mr. Rugh had mentioned that he
6 had spoken with the trustees and the other matters you
7 had spoken to?

8 A. We had talked although not specifically
9 about an alternative to full-time employment in the
10 Justice Department. I was asked many times have I
11 filled out my 171 form.

12 Q. I am talking about a contract. Was the only
13 time you talked about a contract during that one call
14 with Mr. Rugh?

15 A. No. Prior to this call, he mentioned the
16 possibility of a contract.

17 Q. So he had mentioned the possibility of a
18 contract prior to that call in addition to the
19 possibility of full-time employment?

20 A. Yes.

21 Q. Do you have any present recollection of a
22 discussion with Mr. Rugh on the morning of February

1 21, 1985 regarding the matters in Mr. Rugh's
2 memorandum?

3 A. No. you know who Mr. Glenn Gerstel is?

4 Q. Do you recall Mr. Rugh ever indicating to
5 you that he had serious concerns about whether Inslaw
6 would survive for long? speak with Mr. Gerstel

7 A. Not particularly, no. with Mr. Rugh?

8 Q. So you basically denied the account in Mr.
9 Rugh's memorandum, the first paragraph?

10 A. MR. LIGHTFOOT: I object to that. It is a
11 mischaracterization. day after you spoke with Mr.

12 Rugh, a we BY MR. COOPER:

13 Q. Do you know you had this discussion with Mr.
14 Rugh on February 21, 1985?

15 A. Yes. you recall if it was before Mike Snyder

16 Q. You are absolutely certain of that? called

17 A. Yes. ok it was after Mike Snyder called me.

18 Q. You are certain that the call with Mr. Rugh
19 occurred prior to that date?

20 A. Yes. can't.

21 Q. You are certain that your call with Mr. Rugh
22 occurred prior to February 15, 1985 which reflects

1 21, 1985 regarding the matters in Mr. Rugh's
2 memorandum?

3 A. No. you know who Mr. Glenn Gerstel is?

4 Q. Do you recall Mr. Rugh ever indicating to
5 you that he had serious concerns about whether Inslaw
6 would survive for long? peak with Mr. Gerstel

7 A. Not particularly, no. with Mr. Rugh?

8 Q. So you basically denied the account in Mr.
9 Rugh's memorandum, the first paragraph?

0 A. MR. LIGHTFOOT: I object to that. It is a
mischaracterization. day after you spoke with Mr.

Rugh, a week BY MR. COOPER:

Q. Do you know you had this discussion with Mr.
Rugh on February 21, 1985?

A. Yes. you recall if it was before Mike Snyder

called you? Q. You are absolutely certain of that?

A. Yes. ink it was after Mike Snyder called me.

Q. You are certain that the call with Mr. Rugh
occurred prior to that date?

A. Yes. can't

Q. You are certain that your call with Mr. Rugh
occurred prior to February 15, 1985 which reflects

1 when you spoke with Mr. Snyder. Is that correct?

2 A. Yes. Mr. Gerstel tell you that he was going

3 Q. Do you know who Mr. Glenn Gerstel is?

4 A. He was a lawyer. I am not sure with what
5 firm or what his capacity was.

6 Q. Did you ever speak with Mr. Gerstel
7 regarding your telephone call with Mr. Rugh?

8 A. Yes.

9 Q. When did that occur?

0 A. I can't give you an exact date.

1 Q. Was it the day after you spoke with Mr.
2 Rugh, a week after?

3 A. It was in the week following. That is about
4 as close as I can get.

5 Q. Do you recall if it was before Mike Snyder
6 called you to request a list of creditors?

7 A. I think it was after Mike Snyder called me.

8 Q. Do you recall how many days after he called
9 you?

0 A. No, I can't.

1 Q. You just recapped to Mr. Gerstel what had
2 happened?

1 A. Yes. [unclear] of 1985?

2 Q. Did Mr. Gerstel tell you that he was going
3 to take up this matter with the United States trustees
4 and get an answer for you?

5 A. No. [unclear] department regarding the contract. Is

6 MR. COOPER: I would like to ask the
7 reporter to mark this next document as McKain Exhibit

8 4. Q. I call your attention to the entries for

9 February 15, [McKain Exhibit No. 4 marked for least
10 on this log the identification.] and when you received

11 them from BY MR. COOPER:

12 Q. Mr. McKain, would you review McKain Exhibit
13 4, please. There is no reference on this log to any

14 call Q. Do you recognize the handwriting on McKain
15 Exhibit 4? Is that correct?

16 A. Yes. Is correct.

17 Q. Whose handwriting is that? Is a call from

18 A. That is mine. correct?

19 Q. Is McKain Exhibit 4 a portion of a telephone
20 log that you prepared? That call received?

21 A. Yes.

22 Q. That refers to the year 1985 and various and

1 entries in February of 1985?

2 A. Yes.

3 Q. Mr. McKain, you earlier testified that you
4 routinely kept a log of your contacts with persons at
5 the Justice Department regarding the contract. Is
6 this a portion from those telephone logs?

7 A. Yes.

8 Q. I call your attention to the entries for
9 February 15. What does that reflect in terms at least
10 on this log the number of calls and when you received
11 them from Michael Snyder?

12 A. It reflects a call at 11:38 and 1:21.

13 Q. There is no reference on this log to any
14 call from Michael Snyder regarding a list of
15 creditors; is that correct?

16 A. That is correct.

17 Q. On February 19, there is also a call from
18 Michael Snyder; is that correct?

19 A. Yes, sir.

20 Q. What time was that call received?

21 A. 12:51.

22 Q. In the second line -- read along with me and

1 correct me if I say it wrong. It it says "Michael
2 Snyder." Does that reflect he called you or that you
3 could have called him?

4 A. Just that a discussion took place.

5 Q. How does that start out? What does tha say?

6 A. "Wish to have the Northern Texas collections
7 typed today. They have seen a list of Inslaw
8 creditors and don't think we will make it in Chapter
9 11. How long do we need machine -- computer --" and I
10 made my own note we had the release of software to do,
11 preparation for distribution.

12 Q. Mike told told you in that conversation
13 they, meaning the Executive Office of U.S. Attorneys
14 saw a list of Inslaw's creditors and don't think
15 Inslaw will make in Chapter 11?

16 A. Yes.

17 Q. Did you mention in that call you had spoken
18 with Jack Rugh and the trustees didn't think they
19 would make it easier?

20 A. No.

21 Q. Did you tell Mike that you had spoken with
22 Bill Hamilton and he assured you that Inslaw was going

1 to make it?

2 A. I can't recall.

3 Q. But you do recall Mike having said after
4 reviewing the list of Inslaw creditors that the
5 Executive Office did not think Inslaw would make it in
6 Chapter 11?

7 A. Yes.

8 Q. Had Mike expressed that view to you at any
9 time prior to February 19?

10 A. No.

11 Q. Had anyone else from the Executive Office
12 expressed that view before February 19?

13 A. Only Jack Rugh's call.

14 Q. Did Jack Rugh say he didn't think Inslaw
15 would make it in a Chapter 11 either?

16 A. I am fairly certain he did not mention it
17 other than the first statement of his phone call.

18 Q. Did you ever call Jack Rugh after that first
19 call to discuss the trustees?

20 A. Not that I can recollect.

21 Q. You never followed up on that and asked Jack
22 for further information about the trustees; is that

1 correct?

2 A. I may have called at Mr. Hamilton's
3 prompting, but I don't think I ever had a discussion
4 regarding it.

5 Q. What was the connection with Mr. Hamilton
6 prompting? Did he ask you to call Jack?

7 A. I think at a later date, he came to me and
8 said, "What is this trustee. You should call Jack
9 Rugh and try to get more information from him."

10 Q. When did that occur? You said you had the
11 call from Jack Rugh, you confronted Mr. Hamilton, he
12 assured you. When in connection with that discussion
13 did Mr. Hamilton then prompt you to call Jack Rugh
14 back?

15 A. I can't give a specific date.

16 Q. Days later, a week later, the same day?

17 A. Not the same day. It seems to me it was
18 like a week or so later.

19 Q. What was the purpose of calling Mr. Rugh?

20 A. To obtain more information about trustees
21 which I knew very little about at that time.

22 Q. Did Mr. Hamilton tell you it would help him

1 in the litigation against the department?

2 A. Not really. He said, "I would like you to
3 call Jack and see what he meant by these trustees."

4 Q. Did you ask Mr. Hamilton why?

5 A. Not particularly.

6 Q. Were you a little reluctant to call Jack
7 back on that matter?

8 A. No.

9 Q. I call your attention to the second page of
10 McKain Exhibit 4 to the reference to 2:22. You have
11 "MS - " What does that say?

12 A. MS is for Mike Snyder. I returned his call
13 and left a message.

14 Q. Left message, meaning you called him and
15 left a message?

16 A. Yes.

17 Q. Next?

18 A. Jack Rugh, I left a message for him
19 regarding trustees.

20 Q. Do you have a present recollection of
21 leaving a message for Mr. Rugh regarding trustees?

22 A. Yes.

1 Q. Was this the call that you made at Mr.
2 Hamilton's urging?

3 A. Yes.

4 Q. Do you have a present recollection of that?

5 A. Of the call?

6 Q. Of having made that call at Mr. Hamilton's
7 urging?

8 A. Yes.

9 Q. Did you?

10 A. Yes.

11 Q. Did Mr. Rugh ever call you back regarding
12 the trustees?

13 A. I believe not because I never really ever
14 discussed it any further.

15 Q. Did you try to call him again?

16 A. No.

17 Q. Hadn't Mr. Hamilton told you it was
18 important to call Mr. Rugh?

19 A. He didn't stress importance but that I call
20 him.

21 Q. You had not spoken to Mr. Rugh to get that
22 information?

1 A. No.

2 Q. You made just the one call and never
3 followed it up again?

4 A. Right.

5 Q. Go back to the prior page. You left that
6 message for Mr. Rugh regarding the trustees at 10:41
7 a.m. on February 22; is that correct?

8 A. Yes.

9 Q. Your notes reflect at 12:15 on February 22,
10 you spoke with Mr. Rugh?

11 A. Yes.

12 Q. Do you recall during that discussion? Do
13 you recall whether Mr. Rugh was returning your call
14 when you spoke to him at 12:15?

15 A. He was returning my call.

16 Q. Did you ask him about the trustees?

17 A. No.

18 Q. Why not?

19 A. At that point, I started to feel it was a
20 fairly tender issue and I did not press it with him.

21 Q. What happened between the time you left the
22 message at 10:41 and 12:15 that led you to believe

1 that it was a tender issue?

2 A. The fact that I was requested to call him
3 back in the first place kind of tipped me off that
4 this could be beyond some general information that I
5 should have found out about.

6 Q. But you did call him and leave a message?

7 A. When Mr. Hamilton, my boss, said call Jack
8 Rugh, I called him.

9 Q. You were not bothered about that?

10 A. No. Mr. Rugh express any concern to you as a

11 Q. In between 10:41 on February 22 and 12:15 on
12 February 22, you became sufficiently bothered about it
13 that you did not discuss the matter with Mr. Rugh?

14 A. I don't think I have been particularly
15 bothered about it. It is just a descriptive phrase of
16 what I thought about the matter.

17 Q. But you did not discuss the trustee matter?

18 A. No. What we had to hand over to Mike Snyder.

19 Q. What did you discuss with Mr. Rugh?

20 A. That the prime computer would probably be
21 removed next week from the computer center.

22 Q. Do you recall Mr. Rugh during this period of

time being concerned about removing the government's prime computer from the Atlanta facility?

A. He had made calls requesting what would be necessary preparation for removing it. The contract was coming to an end so I was assuming at that point the machine went with it.

Q. Had that been a concern that he had expressed after Inslaw's bankruptcy filing?

A. Not that I am aware of.

Q. Did Mr. Rugh express any concern to you as a result of Inslaw's bankruptcy filing that Inslaw might not be able to perform its remaining deliverables under the contract?

A. No, we were basically completed at that point.

Q. The contract did not expire until March 15?

A. The deliverables were probably 80 percent ready for what we had to hand over to Mike Snyder.

Q. Was it ever your impression that the Executive Office of U.S. Attorneys wanted to see Inslaw liquidated?

A. I have no reason to believe that.

1 MR. COOPER: I have no further questions.

2 MR. LIGHTFOOT: I have no questions, and we
3 don't waive signature.

4 [The deposition was concluded at 12:55 p.m.]
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CERTIFICATE OF NOTARY PUBLIC/COURT REPORTER

I have read the foregoing pages 3 - 59 of my deposition and find the transcription to be accurate except for any corrections noted.

GREGORY A. McKAIN

Date _____

Sworn and subscribed to before me
this _____ day of _____,
19____.

Notary Public in and for

My Commission expires:

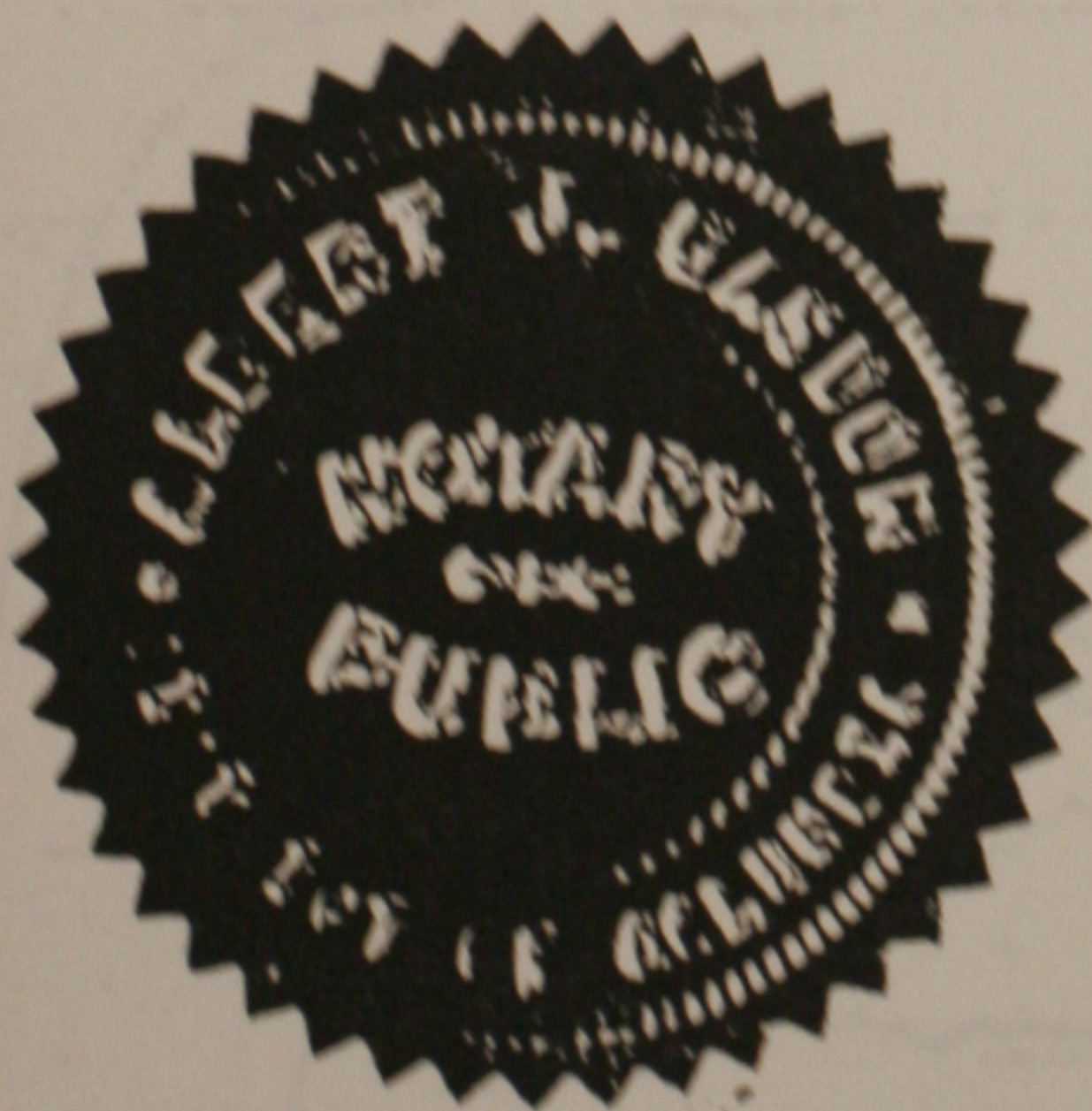
ALBERT J. GASDOR

Notary Public in and for
the State of Maryland

CERTIFICATE OF NOTARY PUBLIC/COURT REPORTER

I, Albert J. Gasdor, the officer before whom the foregoing deposition was taken, do hereby certify that the deponent was duly sworn by me; that the testimony was stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the testimony given.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this proceeding, nor financially or otherwise interested in the outcome of this litigation.



Albert J. Gasdor

ALBERT J. GASDOR
Notary Public in and for
the State of Maryland

My Commission expires:

June 31, 1986

10/10/14
Zach Smith - 1st - check to 11 am Tues

Chap 11 work - prob chap 7

30/10/14

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more to mos

below 25K

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some work by 1 pm (-)

191

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to start work

1st to 1st

to

hid office in house

Timing of 500 per week
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maintenance

McKAIN Ex #1

3-27-87

6

1

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chap. 11 now as - print chap 7 300000

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1911 -

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John T. Work

John T. Work

John T. Work

John T. Work

1911 -

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to work

1:15 to 4:15

to

to be done in house

Time of day

material

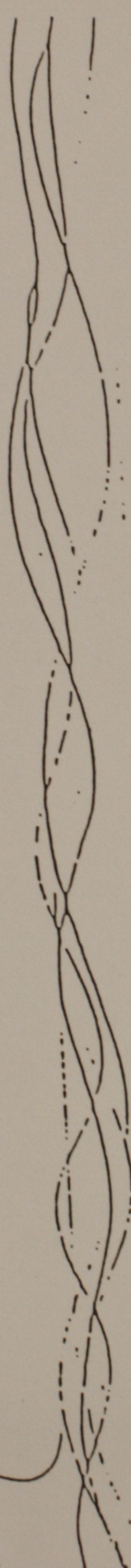
material



25-10-1900

7 min - 1000 p.m.

interline



Mc KAIN Ex. #1

3-27-87

2

1

Spencer 6802



25 15th St., N.W. Suite 600 Washington, D.C. 20036
(202) 828-8600 TWX 710-822-0146 Cable INSLAW

William A. Hamilton, President

May 9, 1986

MEMORANDUM TO: Leigh S. Ratiner, Esq.
Dickstein, Shapiro & Morin
FROM: Greg McKain *GM*
SUBJECT: Conversation with Jack Rugh

Please find attached a photocopy of my notes taken during a telephone conversation with Jack Rugh shortly after INSLAW filed for Chapter 11 protection from bankruptcy in February 1985.

As indicated on the first two lines of these notes, someone had spoken to "trustees" regarding INSLAW's Chapter 11 status and was informed that INSLAW would not survive Chapter 11 and would enter Chapter 7 of bankruptcy within 30 to 60 days.

The remainder of the conversation dealt with possible employment for myself if, in fact, INSLAW no longer continued to do business.

I immediately confronted Bill Hamilton regarding INSLAW's Chapter 11 status due to my great concern for continuing employment.

Attachment

GM:tbr

Memorandum from Greg McKain to Leigh S. Ratiner
(Exhibit C)

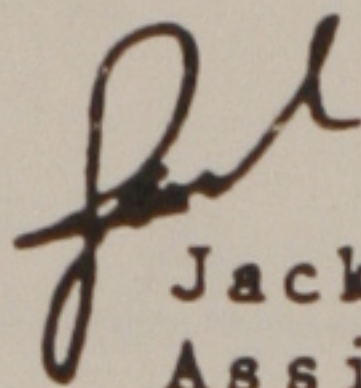
McKain Ex. #2
3-27-87

(G)

February 21, 1985

Conversations with Greg McKain
and Glenn Gerstell

FILE

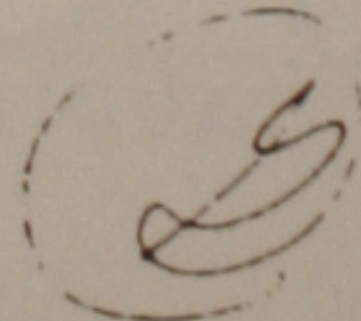


Jack S. Rugh
Assistant Director
OMISS/EOUSA

This morning I spoke to Greg McKain about the possibility of accepting a small contract with us for PROMIS software support following termination of INSLAW's contract. I indicated to Greg that, although we had considered such an option earlier, we had rejected it. I told him we felt that as long as INSLAW existed there was no good basis for offering him a contract. I also told Greg that, because INSLAW had not responded to Pete Videnieks' request for a proposal for a maintenance extension, we felt they were not interested in such an extension. I indicated that I personally had serious concerns about whether INSLAW would survive for long. Greg indicated that he was interested in pursuing a contractual relationship, and I told him that we would discuss the matter with Pete Videnieks.

This afternoon I received a phone call from Glenn Gerstell of Milbank, Tweed. Mr. Gerstell ~~related~~ told me that he had talked with Bill Hamilton regarding a conversation between Greg and Bill. Greg had apparently told Bill that we had offered him a job, and indicated that INSLAW would not survive. Mr. Gerstell said that he wanted to assure me that INSLAW's prospects for survival were good, and to offer any assistance that we may need. He also wanted to know our official opinion on INSLAW's situation. I told him that I had seen to bankruptcy papers, but that he would have to talk to Pete Videnieks or Janice Sposato for any official information. I did tell Mr. Gerstell that we planned to remove our computer from INSLAW's data center prior to the termination of our contract, and that I was concerned about how to accomplish that action.

McKain Ex. #3
3-27-87

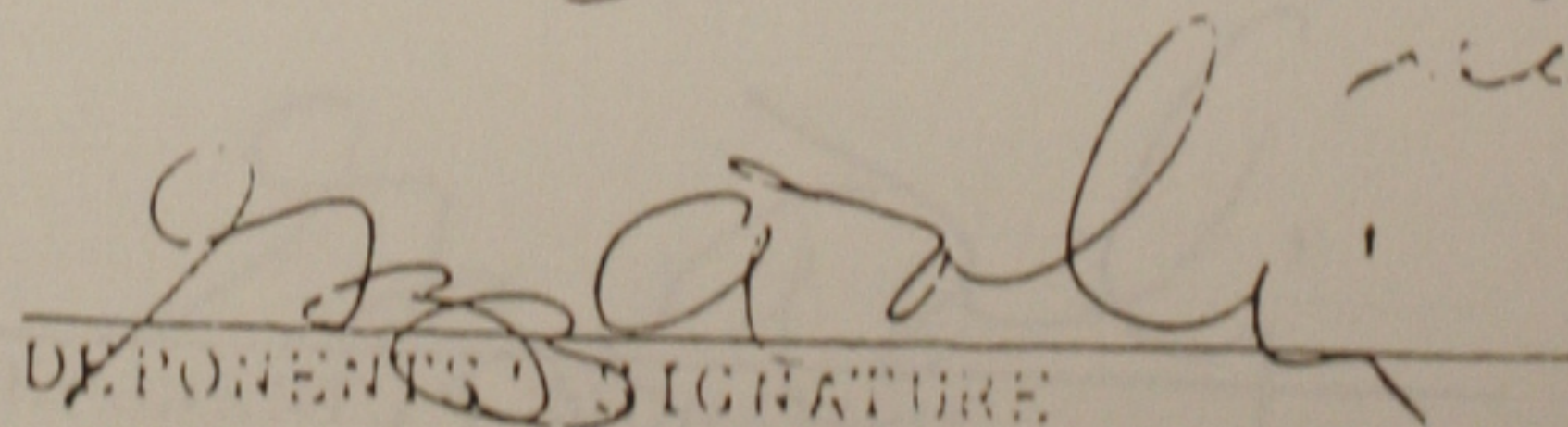


3

To the deposition of GREGORY A. MCKAIN

The deponent having a right to make any changes deemed necessary hereby makes the following changes into the deposition and states the reasons for each change accordingly.

<u>PAGE NO.</u>	<u>LINE NO.</u>	<u>CHANGE</u> (State Reason for change after each)
4	15	"those duties" should be "project manager duties" (clarification)
12	16	"after the bankruptcy was filed" should be "late in the contract" (correction)
13	17	"We have" should be "We don't have" (incomplete recording)
18	17	"if we ave" should be "if I was" (correction)
19	18	"11" should be "7" (incomplete recording)
19	19	"11" should be "7" (incomplete recording)
24	5	"some maintenance" should be "some training" (incomplete recording)


DEPONENT'S SIGNATURE

To the deposition of GREGORY A. MCKAIN.

The deponent having a right to make any changes deemed necessary hereby makes the following changes into the deposition and states the reasons for each change accordingly.

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(insert into record)

the reasons for each change accordingly.

PAGE NO. LINE NO. CHANGE (State Reason for change after each)

4

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"those duties should be project
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(correction)

19

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"11" should be "7" (incomplete
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19

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"11" should be "7" (incomplete
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19

19

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recording)

24

5

"some maintenance" should be
"some training" (incomplete
recording)

(incomplete recording)

17

"if we ave" should be "if I was"

(correction)

18

"11" should be "7" (immediate recording)

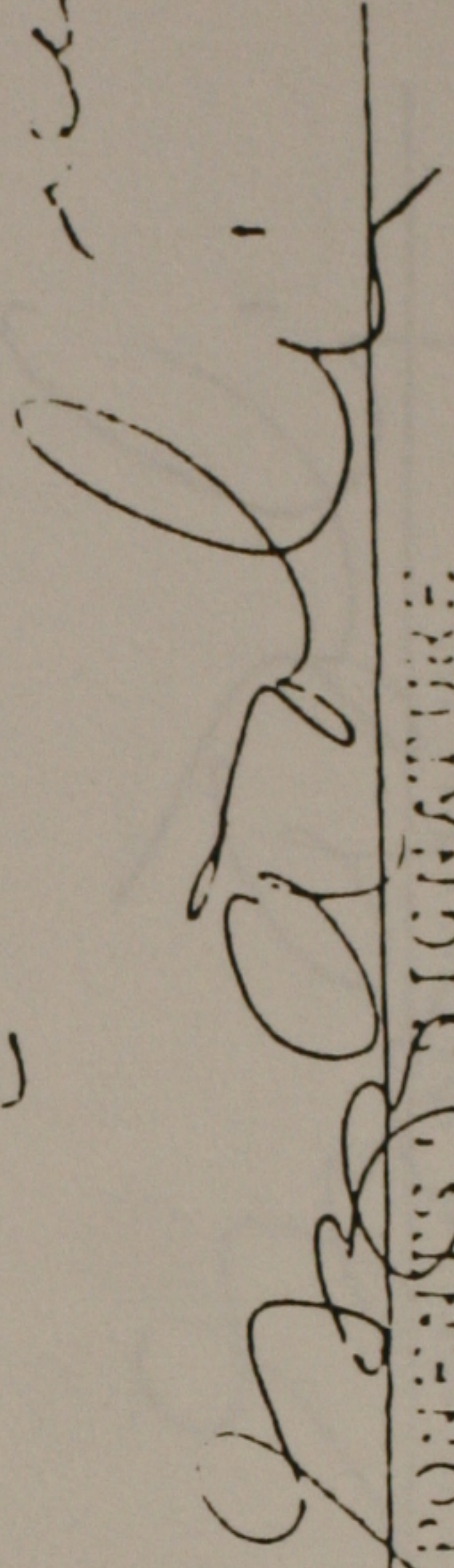
19

"11" should be "7" (immediate recording)

5

"some maintenance" should be
"some training" (immediate recording)

24

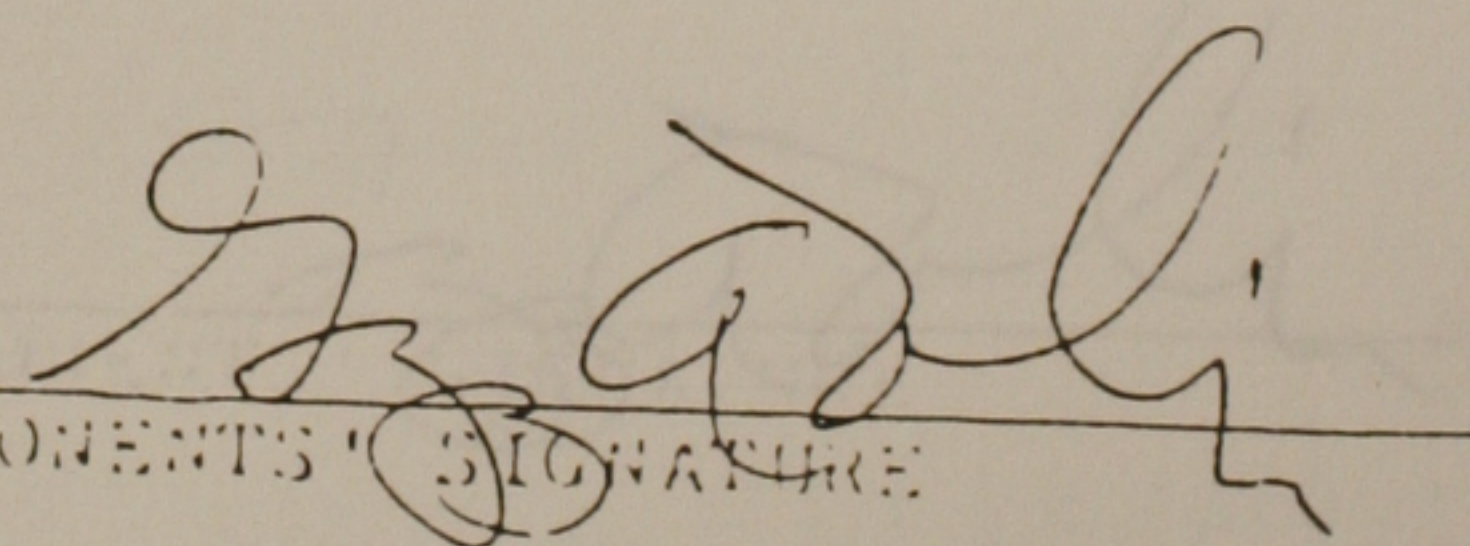

OPPONENT'S SIGNATURE

E-R-R-A-T-A S-H-E-E-T

To the deposition of GREGORY A. MCKAIN.

The deponent having a right to make any changes deemed necessary hereby makes the following changes into the deposition and states the reasons for each change accordingly.

<u>PAGE NO.</u>	<u>LINE NO.</u>	<u>CHANGE</u> (State Reason for change after each)
27	3	"Inslaw insisted" should be "IF Inslaw existed" (inmate recording)
31	16	"trustee" should be "trustees" (correction)
31	20	"survive" should be "surviving" (correction)
32	8	"were some goings-on" should be "there were some prepositions" (inmate recording)
32	18	"responds" should be "respond" (correction)
33	2	"He did" should be "He said that" "work that would" should be "work would" (correction)


DEPONENT'S SIGNATURE

To the deposition of GREGORY A. MCKAIN.

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PAGE NO.	LINE NO.	CHANGE (State Reason for change after each)
27	3	"Ins law insisted" should be "If Ins law existed" (unavailable recording)

31	16	"trustee" should be "trustees" (correction)
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31	20	"survive" should be "surviving" (correction)
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33	2	"He did" should be "He said that"

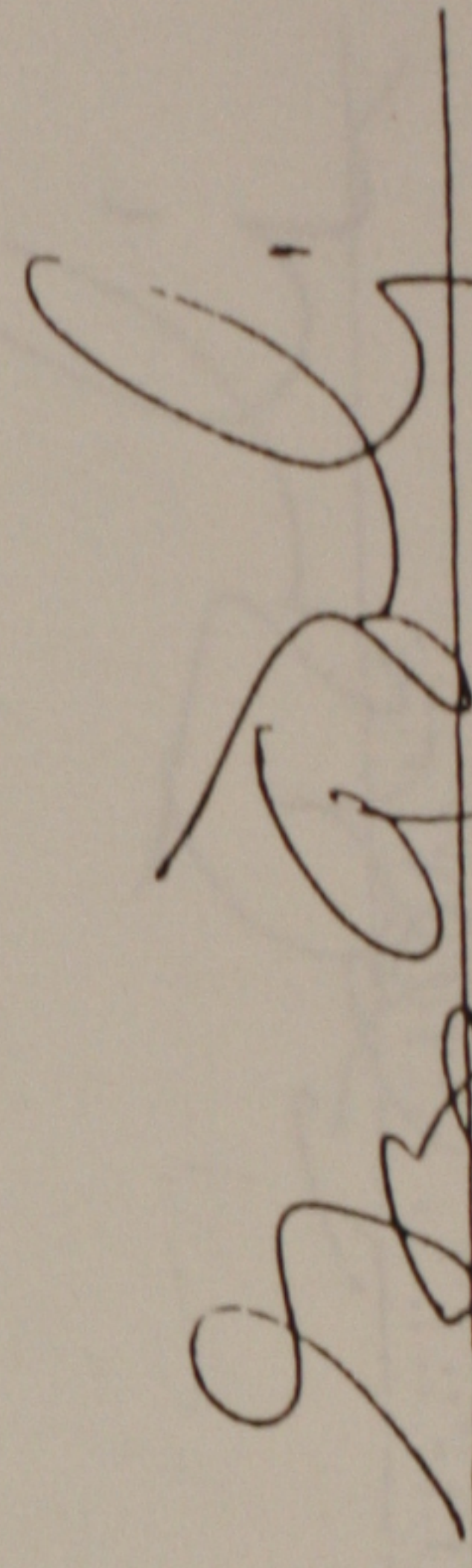
(corrective)

"survive" should be "surviving"
(corrective)

"were some going on" should be
"there were some prepositions"
(instantaneous recording)

"responds" should be "respond"
(corrective)

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"work would" (corrective)


DEPOSITOR'S SIGNATURE

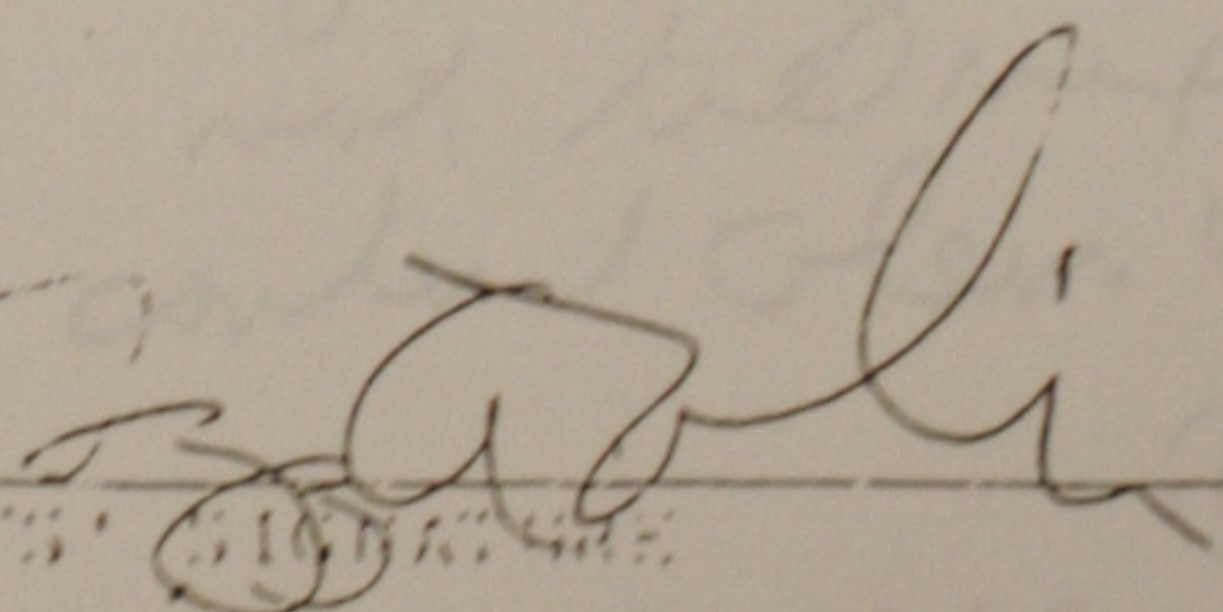
E-R-R-A-T-A S-H-E-E-T

To the deposition of GREGORY A. MCKAIN

The deponent having a right to make any changes deemed necessary hereby makes the following changes into the deposition and states the reasons for each change accordingly.

<u>PAGE NO.</u>	<u>LINE NO.</u>	<u>CHANGE</u> (State Reason for change after each)
39	20	"outlined" should be "outline" (correction)
45	7	"Jack Snyder" should be "Mike Snyder" (correction)
48	13	"you had" should be "you never had" (incomplete recording)
52	7	"typed" should be "tapes" (correction)
58	15	"It is just a" should be "I think kotched is a bad" (incomplete recording)

DEPONENT'S SIGNATURE



To the deposition of GREGORY A. MCKAIN

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48	13	"you had" should be "you never had" (incomplete rewording)
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20

"outlined" should be "outline"
(connection)

7

"Jack Snyder" should be "Mike Snyder"
(insertion)

13

"you had" should be "you never had"
(incomplete rewording)

7

"typed" should be "tapes"
(connection)

15

"It is just a" should be
"I think Cotherved is a lead"
(incomplete rewording)

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"you had" showed he "you never had"

(incomplete recording)

52

7

"typed" showed he "tapes"

(correction)

58

15

"I + is just a" showed he

"I think Cothorved is a lead"

(incomplete recording)

DEPARTMENT OF JUSTICE
RECORDS SECTION
WASHINGTON, D.C. 20535
144768

McKAIN Ex. #4
3-21-81
(9)

2/14 8:45 ^{Supplier} ~~Huber~~ = mammals showed to
ready today - plan to start
1:00 p.m. today

5:57 Mike Supplier - re NT Per 2 - to be set
we'd have them to now - I mean, best
to pick up this part

10:42 Mike Supplier - left my re. Johnny - left my
& sending contents separately

12:03 M.S. - (1) can mammals be done at NPA
- NO (2) Johnny - my delay

2/15 11:28 Show it to you - no code 136 count c
Oil - who noted it

11:20 Mike Supplier - OAN, UAE delayed due to
new AC code for D102

11:21 Mike Supplier - re MA request for
used reg. change - not tied up
week - no. to contact Glen
to help in this (4)

I14768

2/19

... < ... - D. showed him NTX case

W. J. L.

Robertson

ready talent

1000

numbers shared by
plant to plant

✓ 5. ✓

While singing - a NT Part - by which heart
 was then given - I mean heart
 to sing the good of

10:42 Mule Sample - left my v. John's camp in f.
& reaching within 20 minutes of point of destination

8:45 ~~Wilco Sample~~ = mammals shared by
recently taken - plan to collect
1:00 putting

8:57 Wilco Sample - NT Part - by daylight
was taken from NW - 1 min. before
to pick up things for

10:42 Wilco Sample - left my ~ John - leaving in
& sending contents - immediately

12:03 M.S. - (1) can mammals for done at NW
- NC (2) John - my clearing

2:15
11:28 Shaw's - no corals 136 CC must c
D.C. - no more material with

11:28 Wilco Sample - ONW, VPE delayed line to
new AC core for 1512

1 UNITED STATES BANKRUPTCY COURT
 2 FOR THE DISTRICT OF COLUMBIA

3 ----- x
 4 In Re:

5 INSLAW, INC.,

: Case No.

6 Debtor,

: 85-00070

7 -----
 8 INSLAW, INC.,

9 Plaintiff,

10 Vs.

: Case No.

11 THE UNITED STATES OF AMERICA and

: 86-0069

12 THE UNITED STATES DEPARTMENT

13 OF JUSTICE,

14 Defendants.

15 ----- x
 16 Washington, D.C.

17 Wednesday, June 17, 1987

18 Deposition of PETER VIDENIEKS, a witness

19 herein, called for examination by counsel for the

20 Plaintiff in the above-entitled action, pursuant to

21 notice, the witness being duly sworn by SUSAN A. HARRIS,

22 a Notary Public in and for the District of Columbia, at

1 the offices of McDermott, Will & Emery, Suite 500, 1850
2 K Street, N.W., Washington, D.C., at 11:12 a.m., and the
3 proceedings being taken down by Stenomask by SUSAN A.
4 HARRIS and transcribed under her direction.

5 PHILIP L. KELLOGG, ESQ.

6 McDermott, Will & Emery

7 1850 K Street, N.W.

8 Washington, D.C. 20036

9 (202) 898-0722

10

11 On behalf of the Defendants:

12 DEAN S. COOPER, ESQ.

13 U.S. Department of Justice

14 Civil Division

15 P.O. Box 875 Ben Franklin Station

16 Washington, D.C. 20044

17 (202) 724-8418

18

19 Also present:

20 WILLIAM HAMILTON

21 Inslaw, Inc.

22

1 APPEARANCES:

2

3

On behalf of the Plaintiff:

4

JAMES L. LYONS, ESQ.

5

PHILIP L. KELLOGG, ESQ.

6

McDermott, Will & Emery

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1850 K Street N.W.

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P-L-A-I-N-T-I-F-F
D-E-E-N-D-A-N-I-S
Peter Videnieks
By Mr. Kellogg 5
E-X-H-I-B-I-T-S
V-I-D-E-N-I-E-K-S-D-E-P-O-S-I-T-I-O-N-E-X-
I-D-E-N-T-I-F-I-E-D
No. 1 43
No. 2 48
No. 3 54
No. 4 62
No. 5 64
No. 6 89
No. 7 & 7A 96
No. 8 99
No. 9 140
No. 10 145
No. 11 151
No. 12 158
No. 13 179
No. 14 181

1 PROCEEDINGS
2 (Witness sworn.)
3 Whereupon,
4 PETER VIDENIEKS,
5 business address at U.S. Department of Justice, P.O. Box
6 875 Ben Franklin Station, Washington, D.C. 20044,
7 (202) 724-8418, was called as a witness and, after
8 having been first duly sworn by the Notary Public, was
9 examined and testified as follows:

10 EXAMINATION BY COUNSEL
11 FOR PLAINTIFF

12 BY MR. KELLOGG:
13 Q Would you give us your name, sir?
14 A Peter Videnieks.
15 Q Would you spell that for the reporter?
16 A V-i-d-e-n-i-e-k-s.
17 Q Mr. Videnieks, where do you live?
18 A 903 East Capitol Street, Southeast, Washington.
19 Q Nice neighborhood. I used to live in the 100
20 block of Kentucky Avenue.
21 A Oh, yes.
22 Q Not too far from there.

1 Can you give us, Mr. Videnieks, a kind of
2 thumbnail sketch of your educational background and your
3 employment history up to the point where you came to
4 work for the Department of Justice?

5 A Sure. Which do you want first?

6 Q Your education first.

7 A Okay. High school, general degree, economics
8 in college and a master's degree in procurement from Gw.

9 Q What dates are we talking about?

10 A I think it was '54 college and '72 or '73 from
11 GW, the master's.

12 Q What was your first fulltime job after you go
13 through college?

14 A Internal Revenue Service, revenue officer.

15 Q What sort of work did you do as a revenue
16 officer?

17 A Collect taxes.

18 Q Did you work in the collection branch?

19 A Right.

20 Q Around here locally?

21 A New Jersey and locally. Also went to law
22 school for one semester, but that never materialized.

1 Q Where did you go to law school?

2 A I can't remember.

3 Q Sometime after '63, '64?

4 A Yes. Probably '56, GW, but then again --

5 Q You just went for a semester?

6 A Yes. It was at nights, and I couldn't handle
7 it.

8 Q Did there come a point where you terminated
9 your employment with the Internal Revenue Service?

10 A I went to work for NASA, Goddard Space Flight
11 Center, as in the field of procurement.

12 Q When was that, sir?

13 A '67.

14 Q How long did you work at NASA?

15 A I was there twice, approximately to '72. Then
16 I went to U.S. Customs Service till about '74, then back
17 to NASA '75, then back to Customs around '75-'76, and
18 then '80-'81 I came to Justice.

19 Q All right. Now, at what point in your career
20 in government procurement work did you first serve as a
21 contract officer on any particular government contract?

22 A '68.

1 Q This would have been while you were at NASA?

2 A Right.

3 Q Now, before you did that, before you had that
4 first experience as a contract officer --

5 A It could have been '69.

6 Q Whatever date it was, before you did the first
7 ones, either in your academic work at GW or otherwise on
8 the job, did you receive any formal training as to what
9 the functions of a contracting officer were in respect
10 of a government contract?

11 A Yes. NASA had an excellent structured formal
12 training process. One was considered more or less a
13 trainee up through -- I'm a grade 14 now -- through a
14 grade 11, and there were formal courses and also
15 official trainers assigned were senior people who would
16 rate you and make decisions as to whether you can be
17 promoted or not to the next level.

18 Q They would give you guidance generally on how
19 to?

20 A Sure, guidance and, well, in the formal part
21 of the training there were tests, examinations.

22 Q All right, and I take it your academic work at

1 GW in procurement, did that focus on government
2 procurement practices?

3 A Government procurement.

4 Q You have had some training in that as well
5 about the functions of a contracting officer?

6 A Sure.

7 Q Well, I guess I should preface this question
8 by saying, which is probably obvious to you already, I
9 don't know anything about government contracts and all
10 of the intricacies that innere in them except that I
11 know there are a lot of intricacies.

12 Again, give me kind of a thumbnail sketch of
13 what is the function of a contracting officer in a
14 government contract as you understand it.

15 A Can you be more specific, please? Do you mean
16 the pre-award stage, the post-award stage?

17 Q Well, I take it --

18 A Contract administration?

19 Q I guess I am focusing primarily on the period
20 of time during which the contract is in effect, so it
21 would not be the negotiations but from the time the
22 contract is actually executed until during its

1 performance, during that stage is what I'm focusing on
2 in terms of my question.

3 A That stage is referred to as being the
4 contract administration stage, and typically the
5 procurement person would function as a contract
6 administrator.

7 Q What are the duties of the contracting officer
8 in acting as the contract administrator during that
9 contract administration phase?

10 A Again, I wish you'd be more specific. It's a
11 very general question.

12 A The procurement regulations are a two volume
13 looseleaf document.

14 Q I'm just giving you to give me an overview.
15 I'm not asking you to repeat, obviously, every line of
16 two feet of documents

17 A To monitor from a procurement sense the
18 performance of the contract, to see that the effort
19 procured is performed in accordance with the contract;
20 that the government's interests are protected; that the
21 contractor's interests are protected; to issue any
22 necessary contract modifications, negotiate them; again,

1 to see that during the life of the contract the contract
2 reflects changing additions, if there are any.

3 Q Now, you mentioned that among your duties were
4 to both see that the interests of the government were
5 protected in connection with the contract and also to
6 see that the interests of the contractor were protected.

7 Do I take it from that that as a part of your
8 role that the concept of the contracting officer is that
9 you are to be something of an independent person, or are
10 you there simply to protect their best interests in the
11 particular contract?

12 A Would you at least clarify the word
13 "independent"? Obviously, I work for the government.

14 Q I understand.

15 A I'm not a judge.

16 Q I'm just following up. You indicated that
17 part of your duties, a part of a contract
18 administrator's duties would be to see that the
19 government's interests were protected and, as well, to
20 see that the contractor's interests were protected.

21 A Right, and maybe I understand. You asked me
22 about the contractor's interests now?

1 Q Yes. Implicit in that, it seems to me, at
2 least I took it implicit in that, is the notion that
3 your function was not limited indeed to merely
4 protecting the government's interests. Is that a fair
5 statement?

6 A Well, true in the sense this being one
7 example. I advise the technical officers -- I mean the
8 contracting office's technical representative, the COTR,
9 as to what his limitations are. That serves to protect
10 both parties, both the contractor and the government.

11 In other words, it defines the COTR's scope of
12 authority, and based upon this he does not go and direct
13 the contractor to perform acts outside the scope of the
14 contract.

15 Q Let me ask this. Would it be a part of the
16 contract officer's role or duty that if in a given
17 situation the COTR was requesting that the contractor do
18 things that went beyond the scope of the contract, it
19 would be the contract officer's duty to, in effect, sit
20 as a judge on that dispute and decide yeah or nay?
21 Would that be accurate?

22 A It's not accurate because the word "dispute"

1 is not accurate. If there's a difference of opinion as
2 to whether something is within, let's say, a technical
3 direction of the issue, both the contractor and the COTR
4 are advised, have been advised in this case, what they
5 should do if they feel something is outside the scope of
6 the contract.

7 The contractor is advised to contact the
8 contracting officer and advise him that the COTR has
9 requested outside the scope of the contract. Similarly,
10 the COTR is advised not to make requests which are
11 outside the scope of the contract. So the mechanism is
12 there.

13 Q Yes, and the function of the contracting
14 officer within that mechanism is to act, if you will, as
15 an informal arbiter.

16 If the contracting officer feels that the
17 technical direction, for example, is indeed a technical
18 direction, he will issue an administrative order
19 basically ratifying that technical direction. If the
20 contracting officer feels indeed that it was a change
21 order, he would issue a contract modification pursuant
22 to the changes clause.

1 Q So in that sense you do act, the contracting
2 officer would act, you may not want to call it a judge
3 but as an arbiter of any possible disputes on those
4 types of questions between the COTR on the one hand and
5 the contractor on the other. Isn't that right?

6 A Similarly, to the case I just described, the
7 situation I just described, that would be the case.

8 Q In ruling on questions of that sort like you
9 described there, it would be the contract officer's
10 function to perform that duty in an independent way.

11 Now, when I say "independent" in that context,
12 I mean with an independent view of what are the
13 requirements of the contract and not merely from the
14 perspective that you are there trying to protect the
15 interests of the government solely.

16 Is that fair to say?

17 MR. COOPER: Objection to the form of the
18 question.

19 BY MR. KELLOGG: (Resuming)

20 Q You can answer.

21 A I don't like the word "ruling". It implies
22 that a formal ruling as if a judge would make a ruling.

1 Q I mean informal ruling.

2 A As to make my decision as to whether something
3 is a change order or technical direction, subject to
4 administrative approvals, if they apply, I am the
5 authority in that decision. I would sign the document.

6 Q I understand that, and all I'm saying is that
7 just so I understand the concept correctly, the
8 contracting officer's duty in resolving these informal
9 issues of the type that we're talking about here, the
10 contracting officer's duty would be to resolve those
11 issues independently, guided by the contract and the
12 applicable regulations and not guided merely by the
13 parties in interest of a person who is there to do
14 nothing but represent the interests of the government.

15 A Is this a question?

16 MR. COOPER: Object to the form of the
17 question.

18 BY MR. KELLOGG: (Resuming)

19 Q Yes, it's a question. Is that accurate?

20 A It seemed like -- would you please restate it?

21 Q I'm not trying to be tricky here. I'm just
22 trying to make sure I understand.

1 contract You've testified that in the course of the
2 contract officer's function that if there arise issues
3 about whether something that the COTR wants the
4 contractor to do, whether that is within the contract or
5 not; that is, whether it should be done by the
6 contractor within the contract or, if it is to be done,
7 whether it would have to be the subject of a
8 modification. government officials involved with the

9 administra You have indicated that to decide that type of
10 a question would normally be a part of the contracting
11 officer's function; isn't that right? in the Justice

12 Depart A Yes. particularly your goal in connection with

13 this Q All right. Now, my question simply is in
14 performing that function in that setting, isn't it
15 accurate that the contracting officer's duty is to
16 perform that function not guided solely by the partisan
17 interest of the government but rather to be guided
18 independently by the contract and by the applicable
19 regulations?

20 A To be guided by the contracts, the contracting
21 officer, the administrating contracting officer
22 administrates the contract in accordance with the

1 contract provisions.

2 Q All right, and that if anybody is, in effect,
3 going to be there in connection with the contract, the
4 government contract, to represent the interest of the
5 government alone, that's the COTR and the program
6 manager and so on; isn't that right, not the contract
7 officer?

8 A All government officials involved with the
9 administration of a contract are required to adhere to
10 the provisions of the contract.

11 Q I want to turn to your role in the Justice
12 Department and particularly your goal in connection with
13 this INSLAW contract that is the subject of this
14 litigation.

15 I take it, you say, you sent to work at
16 Justice in 1980 or 1981; is that right?

17 A Right.

18 Q What part of the Justice Department did you go
19 to work for?

20 A Justice Management Division.

21 Q All right. Now, I take it there came a time
22 after you went to work at the Justice Management

1 Division that you were assigned to, I believe the phrase
2 is to conduct a competitive procurement in respect of
3 what became this INSLAW contract. Isn't that right?

4 A Right.

5 Q About what time, to your recollection, was the
6 first time you ever heard of this proposed contract?

7 Let me take that back. I don't mean proposed
8 contract. I mean when did you first hear that you would
9 be or you might be assigned to this project, this
10 competitive procurement?

11 A Probably a week or so before I reported for
12 work at the Justice Department. My future supervisor
13 even gave me a copy of the draft work statement which
14 was to be used in the competitive request for proposals.

15 Q Who was your then proposed supervisor?

16 A Patricia Rudd.

17 Q Patricia Rudd?

18 A Yes, R-u-d-d.

19 Q May I infer from that that you were brought
20 over there or that you went over there with the specific
21 view to undertake in this particular project, or was
22 that just a happenstance?

1 A I even learned during the interview process or
2 somewhere along the line that that would be one of my
3 assignments.

4 Q Well, let's put it this way. When you were
5 interviewed, in the course of going to JMD did they
6 indicate that this was the reason that they were looking
7 for another person to act as a contract officer, because
8 they had this particular project and someone needed to
9 work on it?

10 A I don't recall. I was hired. The job was
11 advertised as, I believe, supervisory contract
12 administrator. Upon being hired by Justice Department,
13 I was assigned this task, basically to see the PROMIS
14 procurement through.

15 Q At the time that you were sent a draft of the
16 work statement by Patricia Rudd, had you already been
17 hired but the paperwork was just not completed?

18 A I think so. I think that was the case.

19 Q When was this, roughly?

20 A It would have been a week or so before I
21 reported to work, 1980 or '81, the fall.

22 Q All right, fall of '80 or '81. All right.

1 Now, when you get to work, how long after you
2 get to work do you ever come into contact with this
3 proposed project again?

4 A I imagine pretty quickly.

5 Q Within a few days?

6 A I would say so, yes.

7 Q Now, before you went to JMD, in the course of
8 your other work at NASA and Customs and so on, had you
9 had occasion to act as a contract officer in connection
10 with computer software contracts?

11 A Yes.

12 Q About how many?

13 A I cannot estimate.

14 Q Less than 100?

15 A Less than 100.

16 Q Less than 50?

17 A Less than 50.

18 Q Less than 25?

19 A I would have to guess at that point.

20 Q Now, apart from that experience, did you have
21 any training or particular specialized knowledge in
22 computer software?

1 A From a technical aspect?

2 Q Yes.

3 A The answer is yes but not much.

4 Q So in the course of your work, previous work
5 administering these contracts, would you pretty much
6 rely on some other technical person for technical advice?

7 A Throughout my career, true.

8

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1 Q Now you get over there to JMD, and Patricia
2 Rudd has already given you a copy of this draft work
3 statement.

4 What is the next thing that happens in terms
5 of your involvement with this executive office of U.S.
6 Attorney's project?

7 A I prepare a solicitation document.

8 Q Now, when you say a solicitation document, is
9 this, you know, again my knowledge is so sketchy, is
10 this what they customarily refer to as a RFP, request
11 for proposaal?

12 A In this case, no. In this case, it was a
13 request for industry comment.

14 Q Tell me what's the difference?

15 A It's a preliminary document. It's basically
16 asking industry to comment on the government's
17 requirement as to whether it's current, and maybe
18 whether it's restrictive or not, that kind of thing.

19 Q When you say comment, I take it that what you
20 are looking for is comment from people or entities that
21 might be interested in being bidders, asking whether or
22 not they could or would be willing to bid on a

1 solicitation of this sort, if it were framed in this way?

2 A Partly. Also, for their suggestions, how the
3 requirement could be better met.

4 Q Now, before you did that, either before or
5 after you went to work there, did you go and talk with
6 anybody in the executive office of the U.S. Attorney's
7 regarding what their needs were and get any input from
8 them?

9 A Before I came to work for the Justice
10 Department?

11 Q Either before you came to work, or in any
12 event, before you prepared this solicitation document.

13 A Well, the heart of the solicitation document
14 is a statement of work or specifications, which
15 typically is originated by the program or technical
16 office.

17 Q And in this case it was originated by the
18 people in the executive office of the U.S. Attorneys?

19 A That's right.

20 Q But my question is, in connection with your
21 review of that, and taking that and preparing the
22 solicitation document, did you have any occasion to have

1 any discussions with anybody in the executive office of
2 U.S. Attorneys?

3 A There were -- the executive office of U.S.
4 Attorneys at that time was located, the program office,
5 Patricia Goodrich was the program manager. She was
6 located I believe on the first floor of the same
7 building I was in during this process, the preaward
8 procurement process.

9 There was continuous interface between the
10 program office and the procurement office.

11 Q Okay, so you met with Patricia Goodrich during
12 this period of time frequently?

13 A Right.

14 Q And discussed the statement of work?

15 A Sure.

16 Q And all of the aspects that went into your
17 preparation of the solicitation document?

18 A Yes.

19 Q And roughly how long after you went to work
20 did you issue the solicitation document?

21 A The request for industry comment, I believe,
22 were issued -- I am guessing -- about two months after I

1 reported for work at the Justice Department.

2 Q Now, you indicated that your recollection is
3 that -- strike that.

4 Let's go off the record.

5 (Discussion off the record.)

6 BY MR. KELLOGG: (Resuming)

7 Q All right, off the record, we had a brief
8 discussion trying to pinpoint whether or not you went
9 to work in the fall of '80 or the fall of '81, and I
10 guess everyone's best recollection is, in light of other
11 events, it probably was the fall of '81, correct?

12 A Correct.

13 Q So that assuming that to be correct, would it
14 be somewhere say in the neighborhood of October,
15 November of '81, that you would have issued the request
16 for industry comment?

17 A Correct.

18 Q And how long after that did you get comments
19 back from industry?

20 A I don't recall how much time we gave for
21 comments. It could have been 30 days. It could have
22 been as short a fuse as 15 days.

1 Q All right. And I take it that you got
2 industry comment back, included in that you got some
3 kind of response from Inslaw, didn't you ?

4 A I can't specifically recall, but I'm pretty
5 sure I did.

6 Q All right, now, when you got that, those
7 comments back, whenever you got them and from whomever
8 you got them, were you involved in evaluating those
9 comments?

10 A The comments were, if I remember correctly,
11 primarily technical in nature. I don't have the
12 technical expertise, so I did not evaluate them from a
13 technical viewpoint.

14 I was involved in incorporating the comments
15 in the eventual RFP.

16 Q Once you get the responses to your request for
17 industry comment, do you have any occasion to discuss
18 them with the people in the executive office of U.S.
19 Attorneys?

20 A Yes, I do.

21 Q And here, again, are you still talking to
22 Patricia Goodrich?

1 A I think so. Patricia Goodrich, Carol Sloan.

2 Q Who else?

3 A Jack Rugh I believe was on board at the time.

4 Q Anybody else?

5 A I don't -- I don't think so, that I recall.

6 Q Was Mr. Brewer on board at that particular
7 time?

8 A No.

9 Q Now you get the comments. They are reviewed
10 primarily by the technical people at the executive
11 office.

12 A Also, some comments may have been of the
13 nature that the procurement is restricted and slanted
14 towards, at that time, the incumbent on the pilot
15 project.

16 Q Which was Inslaw?

17 A Right, those comments were resolved.

18 Q What do you mean by that, resolved?

19 A In other words, they were reviewed by the
20 program office, and procurement office, and considered
21 the RFP was released.

22 A There were some changes made to the RFP. It

1 was released.

2 Q All right, so ultimately, the RFP that went
3 out, you were satisfied, and the people in the executive
4 office were satisfied, that as the RFP was released in
5 that form, it was not unfairly slanted.

6 A Restricted; restricted competition. The
7 concern in these situations is restricted competition.

8 Q And you were satisfied that it wasn't
9 restrictive in the form it was released?

10 A Yes.

11 Q About when was it that the RFP was released?

12 A December of '81.

13 Q All right, December of '81.

14 Now, at that point, had Mr. Brewer come on
15 board yet?

16 A I don't think so.

17 Q How long after that did you get responses from
18 the RFP?

19 A I can't recall whether the time for responses
20 was 30 days or 45 days.

21 Q All right, but it was one of the two?

22 A Yes, to the best of my knowledge.

1 Q And either 30 days, 45 days, somewhere in the
2 there, starting with the release of the RFP in December,
3 you get the bids, in effect, don't you?

4 Strike that, maybe it's not bids, but
5 responses?

6 A We call them proposals.

7 Q Proposals in response to the RFP?

8 A Right.

9 Q And Inslaw submitted one of those proposals,
10 didn't it?

11 A Right.

12 Q Now, were you involved in evaluating those
13 proposals?

14 A Yes.

15 Q And did you have discussions with people in
16 the executive office regarding that evaluation?

17 A Yes.

18 Q Now, at this point, again, I take it you are
19 still talking to Patricia Goodrich, Carol Sloan?

20 A Yes.

21 Q And Jack Rugh?

22 A Yes.

1 Q Anyone else during that period of time, the
2 evaluation of the RFP responses?

3 A There was an individual assigned to
4 participate from another organization on the evaluation
5 panel. I can't recall his name.

6 Q But he did not work in the executive office of
7 U.S. Attorneys?

8 A He may have, he may have worked in another
9 part of the executive office, or even outside the
10 executive office.

11 I remember, I think it was an older individual
12 who shortly thereafter retired, but I don't recall his
13 name.

14 Q All right. Here again, was Mr. Brewer
15 involved at all at this point regarding the evaluation
16 of the responses to the RFP?

17 A To the best of my knowledge, no. I can guess
18 at which point Brewer --

19 Q Why don't you tell me now, to your
20 recollection at which point did he become involved?

21 A During the negotiations with Inslaw.

22 Q All right. After you get the comments --

1 strike that -- not the comments, but the responses to
2 the RFP, within what timeframe is a decision made to
3 select a particular contractor, and then begin the
4 process of trying to negotiate a contract?

5 A It varies with the number of proposals
6 received.

7 Q In this case?

8 A Well, your question wasn't phrased that way.

9 MR. COOPER: I object. Do you want to frame
10 your question in connection with this case.

11 MR. KELLOGG: I thought I said this case. If
12 I didn't, I intended to.

13 BY MR. KELLOGG: (Resuming)

14 Q In this case, how long after you got the
15 responses to the RFP was there a decision made to select
16 a particular proposal and then start to negotiate a
17 contract?

18 A I don't recall. Typically what the
19 contracting officer does is to separate, take a look at
20 the proposals from cost proposals, and then submit by
21 memorandum the technical proposals through the technical
22 evaluation panel.

1 A Then he gives them a time for a response.
2 That time could vary from two weeks to six weeks or
3 more. I think in this case, we may have given them two
4 weeks.

5 A And subsequent to that, the contracting
6 officer determines a competitive range as to who is in
7 the zone of consideration, and then the next step is
8 negotiations.

9 Q All right, I take it then that at some point
10 you determined that Inslaw was within the competitive
11 zone?

12 A Right.

13 Q And was there anybody else in the competitive
14 zone?

15 A I don't think so. I think there were two or
16 three people who submitted proposals.

17 Q A total of two or three submitted responses to
18 the RFP?

19 A Correct.

20 Q And of those, your recollection is that Inslaw
21 was the only one you determined to be in the competitive
22 zone?

1 A I think correct. To the best of my
2 recollection.

3 Q So you got Inslaw, the only one you can
4 remember in the competitive zone. And what happens
5 after that?

6 A We negotiated with Inslaw.

7 Q Who participates in the negotiation process on
8 the side of the government?

9 MR. COOPER: In this case, counsel?

10 MR. KELLOGG: Yes, in this case.

11 THE WITNESS: The contracting officer and
12 personnel from the program office, and personnel from
13 the audit staff.

14 BY MR. KELLOGG: (Resuming)

15 Q Well, to your best recollection, who were
16 those people in this case? Obviously yourself, but who
17 in addition?

18 A An interim step, which was left out, is a
19 second set of technical evaluations, basically to
20 concentrate on the contract, or cost proposal, the
21 reasonableness of the loading, and so forth.

22 Then after that is done, negotiations take

1 place, and a negotiation team was composed of me, Pat
2 Goodrich, there was a project director, Jack Rugh, Bob
3 Whiteley.

4 Q And I take it Mr. Whiteley was the person from
5 audit?

6 A Correct.

7 Q He worked in the Justice management division
8 audit section at the department, or whatever it's called?

9 A Right.

10 Q And roughly what period of time did these
11 negotiations cover?

12 A I think they may have covered -- the contract
13 was signed on March 16 of '82. I think negotiations may
14 have covered, including time for submittal of best and
15 final offers and clarifications, a couple of months.

16 Q All right. So that --

17 A So two or three months, because the initial
18 proposal, as submitted by the contractor, offer at that
19 time needed to be significantly revised to enable
20 meaningful negotiations.

21 It was above the budgetary means of the
22 government.

1 Q And what was the original proposal in dollar
2 terms?

3 A If I remember correctly, it must have been \$18
4 million.

5 Q And the budget framework was what?

6 A If I have to guess, it must have been \$6- to
7 \$8 million; maybe less than that, maybe \$5 million less;
8 a significant difference.

9 Q In any event, somewhere by the 15th, 16th of
10 March, the negotiations are concluded, and you get an
11 executed contract with Inslaw; isn't that right?

12 A Right.

13 Q Now, you had indicated earlier in your
14 testimony that your best recollection was that Brewer
15 came on board, Mr. Brewer came on board sometime during
16 the conduct of these negotiations, before the contract
17 was actually signed; that's correct?

18 A That's correct.

19 Q Did he participate, to your recollection, in
20 any of the negotiations that led up to the execution of
21 the contract, March 16, '82?

22 A Yes.

1 Q For what period before the execution of the
2 contract did he participate?

3 A I can't recall.

4 Q Well, would it have been as long as two weeks?

5 A Longer, I feel, but I can't guessed. I think
6 Brewer stepped in at the midpoint of the process.

7 Q So something in the range maybe of a month
8 before the execution of the contract?

9 A I don't want to guess; I really can't remember.

10 Q Whatever the date was that he came in, did he
11 play an active role in the negotiations from the time he
12 got involved?

13 A Yes.

14 Q Would you say that on the side of the program
15 people that he played the dominant role?

16 A No.

17 Q Who did?

18 A I felt I was fairly dominant.

19 Q That wasn't my question. I didn't mean
20 dominant, embracing everyone in the department who was
21 involved, but simply from the program office, that is,
22 the executive office people who were involved in the

1 negotiations.

2 Would it be fair to say that he played a
3 dominant role once he became involved, Mr. Brewer?

4 MR. COOPER: Objection to your question. You
5 haven't laid a foundation that Mr. Videnieks was present
6 at all negotiation sessions which were attended by the
7 executive office of the United States Attorneys.

8 MR. KELLOGG: Well, I'm limiting the question
9 to those that he knows about.

10 THE WITNESS: I think Brewer played a dominant
11 role among the EDUSA personnel. However, not -- he
12 played a dominant -- he was an active participant,
13 because he was brand new, newly on board. And he was an
14 active participant.

15 BY MR. KELLOGG: (Resuming)

16 Q Now, after he came on board, did you and he
17 ever have what I would call an initial meeting, kind of
18 a get acquainted session in which he sat down with you
19 and described generally how he wanted to proceed and
20 wanted to solicit your views?

21 I'm making this up, but I'm asking, was there
22 an initial meeting at any point after Brewer came on

1 board, between yourself and Mr. Brewer about the whole
2 issues, the whole contract?

3 A We met, during the course of our duties, to
4 the best of my recollection. There was no specific
5 meeting to be meant as an introductory meeting. There
6 was no such meeting.

7 Q Well, did you have a meeting with Mr. Brewer
8 alone early on once he became involved?

9 A I don't recall any such meeting. There may
10 have been a meeting where he met -- if I remember
11 correctly, he didn't even have an office at the main
12 Justice building for some time, and then he shared an
13 office or had a temporary office there for some time.

14 And he had other duties in his prior
15 occupation, so he was not readily available.

16 And I don't recall ever having a meeting with
17 him, other than as events dictated.

18 Q In the course of whatever meetings that you
19 did have, that he attended and you attended in this
20 early period, and I'm talking now before the contract
21 was actually executed, did Mr. Brewer ever indicate to
22 you that he had been employed previously at Inslaw?

1 A I can't recall how I came to learn and when
2 Mr. Brewer had ever been employed at Inslaw.

3 Q So my question is, did Brewer ever tell you
4 that. Is your answer that you don't recall him telling
5 you that?

6 A That's my answer.

7 Q But he may have?

8 A He may have, yes.

9 Q Because at some point you did learn that --

10 A Whether it was from Brewer or from someone
11 else, that I cannot recall.

12 Q Do you recall Mr. Rugh ever telling you that
13 Mr. Brewer had formerly been employed at Inslaw?

14 A I don't recall that, no. He may have.

15 Q Do you recall Mr. Brewer, again now, focusing
16 on this period before the execution of the contract, do
17 you recall Mr. Brewer saying anything about his knowing
18 Mr. Hamilton?

19 A I don't recall that, but he may have. I don't
20 recall whether Mr. Hamilton participated in the
21 negotiations or not. Obviously, if Mr. Hamilton
22 personally participated in the negotiation, then the two

1 would have met, and I would have learned that.

2 Q Well, I know obviously if they both
3 participated they would have met during those
4 negotiations, but my question is, did Brewer ever tell
5 you that he knew Mr. Hamilton prior to these
6 negotiations?

7 A I don't recall how or when I learned that.

8 Q But at some point, you did learn that he and
9 Mr. Hamilton knew each other well before this contract
10 began?

11 I don't mean you learned it before the
12 contract began, but you learned at some time that Mr.
13 Hamilton and Mr. Brewer had known each other for a
14 number of years before this?

15 A I learned it sometime.

16

17

18

19

20

21

22

1 Q Did you learn that in the first several months
2 of the contract or within the first few months that the
3 contract was in effect? I know you can't pinpoint it.

4 A I could have, but I don't recall.

5 Q Do you think you learned it in the first year
6 that the contract was in effect?

7 A I think I did.

8 Q Did Mr. Rugh ever tell you that Mr. Rugh and
9 Mr. Hamilton had known each other for a long time?

10 A I don't recall. I don't think so. He may
11 have.

12 Q Now, when Mr. Rugh became involved in the
13 precontract negotiations in early 1982 or, any event,
14 the time preceding the execution of the contract, would
15 you say that he expressed enthusiasm for the PROMIS
16 software? Did he ever express enthusiasm about the
17 software to you?

18 A Brewer or Rugh?

19 Q Brewer.

20 A Brewer. During the competitive negotiations?

21 Q Yes.

22 A I don't recall. In other words, I requested

1 formal technical evaluations of the proposals received.
2 I received formal memoranda back addressing strong and
3 weak points of those proposals, and I don't think Brewer
4 signed them. I think that was by Goodrich.

5 Q Pat Goodrich, I take it she was a technical
6 person?

7 A She was -- Brewer replaced Pat Goodrich as
8 program manager.

9 Q All right. Well, apart from any written
10 memoranda, my question is do you recall Brewer ever
11 expressing any enthusiasm about the PROMIS software
12 during this period of time?

13 A I don't recall it.

14 Q Do you recall Mr. Brewer criticizing the
15 PROMIS software at any time during this precontract
16 period?

17 A I don't recall.

18 Q Do you recall Mr. Rugh expressing any
19 enthusiasm for the PROMIS software during that
20 precontract period?

21 A Formally he signed the technical evaluation
22 report which stated that the proposal as submitted by

1 INSLAW, subject to some clarifications, is technically
2 acceptable, and he either prepared -- I don't know
3 whether he signed it or Pat Goodrich signed it alone,
4 but he was instrumental in seeing that the proposal is
5 good.

6 Q So that, at the very least, he felt the
7 proposal was satisfactory from his perspective at that
8 time?

9 A Correct.

10 MR. KELLOGG: I'm going to ask the reporter to
11 mark this as Videnieks Deposition Exhibit 1, please.

12 (The document referred to
13 was marked Videnieks Exhibit
14 No. 1 for identification.)

15 BY MR. KELLOGG: (Resuming)

16 Q Mr. Videnieks, if you take a look at what has
17 been marked as Videnieks Exhibit 1, and if you will look
18 at page 2-153 -- I take that back. Make it 152.

19 I guess, first of all, I'll just tell you that
20 this document was a part of INSLAW's response to the RFP.

21 A Original proposal or amendment afterwards?

22 Q Original proposal.

1 Can I just ask you to look it over generally,
2 first of all, and tell me if you have any recollection
3 of ever seeing it before? This is just a part of it,
4 not the whole thing.

5 (Pause.)

6 I didn't mean to limit your review of this to
7 page 152. I got ahead of myself.

8 The question is do you recall ever seeing this
9 whole thing before?

10 A If this is an INSLAW proposal, I have not read
11 it but I have seen it.

12 Q Go ahead and read it over to see if you have
13 any recollection of ever seeing it before.

14 (Pause.)

15 A I read page 2-152.

16 Q Well, my question, I guess, is in light of
17 that do you have any recollection as you sit here today
18 if having received what's been marked here as Exhibit 1
19 as a part of INSLAW's response, initial response, to the
20 RFP back in late '81 or early '82, whenever it was?

21 A It appears to be a part of INSLAW's proposal.

22 Q I want to call your attention to -- well,

1 first of all, on page 2-152 there is a section beginning
2 with B. It is labeled System Enhancements and New
3 Modifications and describes various enhancements and
4 modifications.

5 In particular, I call your attention to the
6 last sentence on page 2-152, the sentence that begins,
7 "In addition to the specially funded enhancements,
8 improvements funded by other sources and developed and
9 accepted for inclusion in the software supported by
10 INSLAW will be made available to the U.S. Attorneys
11 Offices."

12 Do you have any recollection as you sit here
13 today of being aware of this part of the document when
14 you received it or after you reviewed it?

15 A I don't specifically recall the number of
16 pages which you have placed in front of me. I do recall
17 the data rights issue as negotiated and the positions
18 taken by parties generally.

19 Q I guess my question is do you recall it being
20 an issue at this point in time?

21 A What point in time?

22 Q The time of INSLAW's initial response to the

4
1 RFP.

2 A During the proposal evaluation stage? We're
3 looking at an undated piece of paper.

4 Q But I'm telling you as just you can assume for
5 the sake of argument that this was a part of INSLAW's
6 response, initial response to the RFP. I don't have a
7 precise date, but it would have been sometime, I take
8 it, in early '82 before the contract was executed.
9 Correct?

10 A I didn't hear your question. It's difficult
11 to follow. There's no question mark at the end. It's a
12 statement, and I have difficulty following you, sir.

13 Q You have testified that you remember the data
14 rights issue. My question simply is do you recall
15 INSLAW's calling your attention to the fact that the
16 system they proposed to deliver to the Department under
17 the then proposed contract would include privately
18 funded enhancements?

19 MR. COOPER: You're asking that question not
20 related to this document?

21 MR. KELLOGG: I am asking it, yes, unrelated
22 to the document.

1 BY MR. KELLOGG: (Resuming)

2 Q Do you recall that ever coming to your
3 attention?

4 A I recall the part of the negotiations that
5 dealt with data rights and the fact that the government
6 demanded and received in the contract unlimited rights
7 to data delivered under the contract.

8 Q You're not answering my question.

9 A This sentence does not jump out at me from
10 three or four or five years ago.

11 MR. COOPER: Nor does that sentence say
12 anything about privately funded enhancements, I would
13 add.

14 BY MR. KELLOGG: (Resuming)

15 Q Just answer my question, and I'll try to make
16 it simple and concise.

17 My question is do you recall INSLAW calling to
18 your attention before the contract was executed on
19 March 15, 16, whatever it was, 1982, that they intended
20 to provide software that included privately funded
21 enhancements?

22 A I specifically don't recall that.

1 Q Would you deny that they made you aware of
2 that, sir?

3 A I think in the documentation there is
4 reference to during the negotiation process both sides
5 took positions, and I think that INSLAW may well have
6 taken such a position in their written material.

7 Q So you very well could have been aware that
8 they contended that this was what they were going to do
9 during the negotiation stage?

10 A I could have been aware.

11 MR. KELLOGG: I ask that this be marked as
12 Videnieks Exhibit 2, please.

13 (The document referred to
14 was marked Videnieks Exhibit
15 No. 2 for identification.)

16 (A brief recess was taken.)

17 BY MR. KELLOGG: (Resuming)

18 Q Mr. Videnieks, if you could take a look at
19 what's been marked as Exhibit 2. It appears to be, the
20 first page of it appears to be an undated letter to
21 INSLAW signed by yourself attaching a number of --
22 several pages that contain a number of questions.

1 Just look that over and tell me whether you've
2 ever seen it before.

3 A I've seen this, yes.

4 Q Is this letter plus the attachment that is
5 appended to it, did you send this letter to INSLAW in
6 response to their initial response to the RFP?

7 A Yes.

8 Q Even though it doesn't have a date, down at
9 the third paragraph from the bottom that you ask that
10 they provide you the clarifications and so forth by the
11 close of business January 13, 1982.

12 A Right.

13 Q I assume from that that this letter would have
14 been dated sometime before January 13, 1982?

15 A Correct.

16 Q Now, were you involved in the preparation of
17 the attachment, Mr. Videnieks?

18 A No. I may have added to it, cleaned it up.
19 Well, that's involvement but not from the technical
20 point of view.

21 Q I take it that you would have read it before
22 you sent it over with your cover letter, isn't that

1 right? It says Task 9, Maintenance and Support?

2 A Sure.

3 Q All right. If you take a look at page 3 of
4 the attachment, the item marked Task 9, Support and
5 Maintenance and subpart B, there is a question there.
6 "Why does the offeror consider the data base adjustment
7 software to be proprietary?"

8 Do you remember reading that question when you
9 reviewed that document before you sent it over to
10 INSLAW, sir?

11 A I don't specifically remember that question
12 alone, but I do remember the letter and the attachment.

13 Q Is it fair to infer that this question, this
14 is question 9B in the attachment, was a result of the
15 statements that INSLAW had made in its initial response
16 to the RFP on page 2-152 that I called your attention to
17 earlier?

18 A The attachment relates to the proposal.

19 MR. COOPER: To the specific pages?

20 BY MR. KELLOGG: (Resuming)

21 Q If you will notice, take a look at the front
22 of what was marked as Exhibit 1, the first page. You

1 notice it says Task 9, Maintenance and Support?

2 A Correct. *page is contained in there, isn't it?*

3 Q And if you turn to page 2-152, it says B,
4 letter B, System Enhancements and New Modifications.

5 A Correct. *in Exhibit 1.*

6 Q Well, if you look back to page 3 of the
7 attachment to Exhibit 2, that refers to Task 9, System
8 and Maintenance, Part B. *this question. Can you point*

9 *to anything?* Now, in light of all that, my question is is
10 it fair to infer that this question 9B on page 3 of the
11 attachment was a result of the materials that I referred
12 to here on page 2-152 of Exhibit 1? *other than the*

13 A The question is directed to Task 9 of INSLAW's
14 proposal. *I'd have to read the proposal in detail. I*

15 *have* Q It's addressed to Section B of Task 9, isn't
16 that right? *it's read 9B.*

17 A Yes. It appears to be. It is numbered B.

18 Q In Section 9B of INSLAW's response, they did
19 mention, among other things, in addition to the
20 specially funded enhancements, "improvements funded by
21 other sources and developed and accepted for inclusion
22 in the software and supported by INSLAW will be made

1 available to the U.S. Attorneys Offices."

2 That language is contained in there, isn't it?

3 A Yes, sir. You were reading it, right?

4 Q Yes.

5 MR. COOPER: In Exhibit 1.

6 MR. KELLOGG: In Exhibit 1.

7 BY MR. KELLOGG: (Resuming)

8 Q Let me ask you this question. Can you point
9 to anything else in Section 9B of INSLAW's initial
10 response to the RFP as it is marked there, Exhibit 1,
11 that would have prompted this question 9B on the
12 attachment to your January '82 letter other than the
13 language that I'm talking about?

14 A I'd have to read the proposal in detail. I
15 have not read all the pages you gave me.

16 Q Well, read 9B.

17 A Okay, I'll take some time and read it.

18 MR. COOPER: Counsel, just to state for the
19 record, I believe it was you, counsel, who inferred that
20 A, B and C under Task 9 relate to the specific
21 subsections. I don't know whether or not that inference
22 is valid because each of the sections, it might have

1 just been like a 1, 2, 3.

2 (Pause.)

3 BY MR. KELLOGG: (Resuming)

4 Q Do you remember the question?

5 A No, please restate it.

6 Q The question is after reviewing Section 9B of
7 INSLAW's initial response to the RFP as it is contained
8 there in Exhibit 1 before you, can you point to any
9 other part of that Section 9B of the initial response
10 that would have prompted the question set forth at Task
11 9B, page 3 of the attachment to your letter to INSLAW,
12 in January of '82?

13 MR. COOPER: I object to the form of your
14 question, counsel. The witness did not point to that
15 sentence that you referred to. You pointed to that
16 sentence.

17 So to the extent that your question assumes
18 that the witness has referred to that sentence as part
19 of the answer, there is no predicate laid for it, and
20 the form of your question is improper.

21 MR. KELLOGG: I'm not saying he did point to
22 it. Obviously I pointed.

question is can he point to anything else

proposal or response, initial response in

on 9B of that that would have prompted

at page 3 of the attachment to Mr.

except the sentence that I had

I make the same objection. I'm

how to ask your questions, but

the question if there's anything in

recall that prompted that.

our objection is noted. I will

in't know what prompted the

thing else in there.

that this be marked as

document referred to

marked Videnieks Exhibit

for identification.)

Mr. Videnieks,

letter to you, a

MR. COOPERS: I object to the form of the question, counsel. The witness did not answer the sentence that you referred to. The witness did not answer the sentence.

So to the extent that your question is to the effect that the witness has referred to that sentence in the answer, there is no predicate for the question. The form of your question is improper.

MR. KELLOGG: I'm not saying he did not answer it. Obviously I pointed.

1 My question is can he point to anything else
2 in INSLAW's proposal or response, initial response in
3 Exhibit 1, Section 9B of that that would have prompted
4 this question 9B at page 3 of the attachment to Mr.
5 Videnieks' letter except the sentence that I had
6 referred to earlier.

7 MR. COOPER: I make the same objection. I'm
8 not trying to tell you how to ask your questions, but
9 perhaps maybe to ask the question if there's anything in
10 this section that he can recall that prompted that.

11 MR. KELLOGG: Your objection is noted. I will
12 stick with this question.

13 THE WITNESS: I don't know what prompted the
14 question, but I don't see anything else in there.

15 MR. KELLOGG: I ask that this be marked as
16 Videnieks 3.

17 (The document referred to
18 was marked Videnieks Exhibi
19 No. 3 for identification.)

20 BY MR. KELLOGG: (Resuming)

21 Q I ask you to review that, Mr. Videnieks,
22 what's marked as Exhibit 3. It's a letter to you, a

1 copy of a letter to you from Dean Merrill dated
2 January 14, 1982, together with what's labeled Amendment
3 to Proposal.

4 I can save you some time. If you turn to page
5 9 of the attachment which deals with under Section B
6 there that deals with Section 9B of the proposal.

7 For the record, the discussion in the
8 attachment of Task 9 begins at the bottom of page 8.

9 Does that appear to be -- The section I
10 referred you to on page 9, does that appear to be a
11 response to the question under Task 9B that was in the
12 attachment to your earlier January '82 letter to INSLAW?

13 A Yes.

14 Q Would it be fair to say that in this document
15 what's marked here as Exhibit 3 INSLAW was asserting
16 that it had proprietary rights in its software?

17 A At this point in contract negotiations,
18 INSLAW's position appears to reflect that position.

19 Q If you look specifically in that page 9,
20 subsection B there, the sentence beginning "subsequent
21 to May 1981", and not just the sentence but that whole
22 paragraph, did that appear to be an assertion by INSLAW

1 that its software contained privately funded
2 enhancements?

3 A The first sentence states, makes a statement
4 as to when INSLAW began receiving funding.

5 Q From nonfederal sources, isn't that right?

6 A Right.

7 Q The second sentence goes on to indicate that
8 they made certain data base adjustments under that
9 funding, the nonfederal funding; Isn't that right?

10 A That's what it says.

11 Q So my question is it was clear at that point
12 that INSLAW was claiming that their software included
13 privately funded or nonfederally funded enhancements;
14 Isn't that right?

15 A At that point in the negotiations they took
16 that position.

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1 Q Now, during this period of negotiations prior
2 to the contract, prior to the execution of the contract,
3 do you recall a session in which Mr. Brewer was critical
4 of Inslaw's work?

5 A Prior to award of the contract?

6 Q Yes.

7 A No.

8 Q You wouldn't deny that he may have made a
9 statement during some of those meetings that was
10 critical of Inslaw's work, would you?

11 A During the negotiations of the contract that
12 led up to the award of the particular contract we're
13 talking about?

14 Q Yes.

15 A I don't recall him making any kind of a
16 statement like that.

17 Q But I say, you wouldn't deny that he made such
18 a statement. You just don't recall it, that's your
19 testimony?

20 A I would probably deny that he made it to me.

21 Q Or in your presence?

22 A I don't recall it. I don't recall it in a

1 very strong manner.

2 Q Do you recall, in words or substance, Mr.
3 Brewer saying words to the effect that prosecutors in
4 Michigan and in Colorado didn't think much of Inslaw's
5 work, or they didn't think it was very good, or words to
6 that effect?

7 A I don't recall that. This would have been in
8 negotiations with Inslaw?

9 Q That's correct, during the negotiation
10 sessions attended by representatives of the government
11 and Inslaw.

12 A I don't recall that.

13 Q Do you recall Mr. Brewer making statements
14 like that at anytime?

15 A About -- no. About Michigan.

16 Q Not about Michigan or Colorado. Do you recall
17 him making statements that he didn't think much of
18 Inslaw's work or being critical of Inslaw's work at
19 anytime?

20 A At any time prior to award of the contract?

21 Q At anytime?

22 A When we had difficulties with the

1 implementation of the word processing sites, where
2 Inslaw fell significantly behind the contract schedule,
3 there were discussions among concerned personnel,
4 expressing concern about the fact that Inslaw had fallen
5 behind schedule.

6 Q And Brewer was among those?

7 A Sure, he was the manager. He was responsible
8 to see that that promise was implemented on time.

9 Q And so he expressed criticism of Inslaw at
10 that time, is that right?

11 A He commented on the unfortunate fact that the
12 contract had slipped significantly.

13 Q That's being critical of Inslaw, isn't it?

14 MR. COOPER: Objection, counsel.

15 THE WITNESS: It's being critical of
16 performance under the contract.

17 B-Y MR. KELLOGG: (Resuming)

18 Q I want to go back for a minute to this Exhibit
19 3. When you received this from Mr. Merrill, what did
20 you do with it?

21 A I forwarded this material to the technical
22 evaluation panel.

1 Q And did you have any further involvement in
2 their evaluation of this response to the questions?

3 A Probably I asked the technical evaluation
4 panel to make a statement as to whether Inslaw's
5 proposal is now technically acceptable.

6 I think at first the basic proposal was
7 conditionally acceptable based on clarifications of
8 certain points.

9 Q Now, do you recall at any point during the
10 pre-contract negotiations, any discussion with anyone on
11 behalf of Inslaw in which they, the Inslaw people,
12 objected to the -- I guess I would call it the standard
13 government data rights clause that had been contained in
14 the RFP?

15 A In the RFP, the clause, the data rights clause
16 contained in the RFP remains in the contract.

17 Q Was there a different data rights clause
18 contained in the initial solicitation document?

19 A The solicitation document contained a schedule
20 article.

21 Q What is that?

22 A It's an order of precedence. It would take

1 precedence over the boilerplate clauses in the contract.

2 Q Does that mean it was different from what was
3 in the RFP, the data rights clause in the RFP?

4 A There were two provisions of the RFP that
5 dealt with data rights. The data rights clause which
6 currently remains in the contract, and a schedule
7 article which contained a sentence which Inslaw felt
8 would restrict their rights to market, promise to other
9 people.

10 Because of that concern of Inslaw's during
11 negotiations, the schedule article was excluded. It was
12 agreed to exclude it from the actual contract.

13 Q And was something else substituted for the
14 scheduled article?

15 A Nothing. Inslaw's basic concern was not data
16 rights, but the ability to market.

17 Q If they didn't have the data rights, they
18 couldn't market it, could they?

19 A You should read that article, sir. It's three
20 sentences.

21 MR. KELLOGG: All right. Mark this as Exhibit
22 4, please?

1 (The document referred to
2 was marked Videnieks Exhibit
3 No. 4 for identification.)

4 BY MR. KELLOGG: (Resuming)

5 Q Take a look at Exhibit 4 if you will.

6 Mr. Videnieks, I see that we have got an
7 obvious mistake in the second page, because I see it's
8 something that has a date of August 11, 1982.

9 MR. COOPER: Can we just rip that out? Can we
10 rip page two out?

11 MR. KELLOGG: That was not intended to be a
12 part of that, and if we just discard it, we will start
13 over again.

14 MR. COOPER: There are some other attachments
15 to it.

16 MR. KELLOGG: After the signature, just take
17 that out also. That's a mistake.

18 You should end up with a three-page letter
19 dated March 1, 1982, to you from Mr. James Kelly, then
20 general counsel of Inslaw.

21 BY MR. KELLOGG: (Resuming)

22 Q Is that a copy of a letter that Mr. Kelly sent

1 to you on March 1, 1982?

2 A Yes, sir.

3 Q Now looking at page 2, paragraph labelled with
4 the Roman number IV, rights in data.

5 A I'm looking at it.

6 Q And it says there, the rights in data clause
7 as found in the RFP, section C, award/contract, comma,
8 article 12, shall be deleted.

9 Now, does this ring any bells with you as to
10 what it was that was deleted? Do you recall this?

11 A I don't have the contract in front of me, but
12 I believe article 12 was deleted as a part of the total
13 negotiation package; it was deleted.

14 Q You had indicated it was your recollection
15 that there were two provisions in the RFP that dealt
16 with data rights.

17 One was what you called the data rights
18 clause, and the other was something you called a
19 schedule article?

20 A Which is article 12, referred to here. I
21 believe it's 12.

22 MR. COOPER: Do you want to break here and get

1 the RFP to examine him with after lunch?

2 MR. KELLOGG: No, let's mark this as the next
3 number.

4 (The document referred to
5 was marked Videnieks Exhibit
6 No. 5 for identification.)

7 BY MR. KELLOGG: (Resuming)

8 Q Now if you take a look at what's been marked
9 as Exhibit 5, just look that over and tell me if you've
10 ever seen it before?

11 A I've seen it.

12 Q Can you identify that for me, what it is?

13 A It's clause 74, rights in data, rights to
14 technical data and computer software, which was in the
15 RFP and is in the resulting contract.

16 Q And is it your testimony that the article 12,
17 at least your recollection is, that the rights in data
18 clause referred to in Mr. Kelly's March 1 letter in the
19 RFP, section C, article 12, that was to be deleted, your
20 recollection is that's a different clause from this one
21 that became clause 74 in the contract?

22 A Yes.

1 Q And what to your recollection did the article
2 12 -- what in substance did that provide for?

3 A I would like to see it. But what I recall
4 from the negotiations is that problems with the second
5 sentence, the middle sentence of that short provision,
6 which seems to restrict the contractor's ability to
7 independently market PROMIS.

8 And as a part of the total negotiations, the
9 contract was negotiated as a package, it was give and
10 take on various issues, we agreed to take that article
11 out.

12 Q And in testimony earlier that in the contract
13 as it was eventually executed in March of '82, that the
14 government had unlimited data rights to the data
15 supplied to them?

16 A Yes, sir.

17 Q Look here under the definitions in clause
18 74(a)sub8 down at the bottom of the first page there.

19 You see the definition there of limited rights?

20 A I see it.

21 Q If you turn to page 116 down at the bottom,
22 parenthetical 2, captioned, limited rights.

1 A I see it.

2 Q In your understanding, was there any part of
3 these data, the rights of the data, as to which the
4 government had any limited rights?

5 A No, unlimited as to everything.

6 Q What is this referring to here when it says,
7 limited rights?

8 A The clause was written for all situations, to
9 cover multiple situations. I clearly marked out the
10 part of the clause that deals with limited rights, or
11 any kind of restriction.

12 Q Now, when you say you marked it out, turn over
13 to page 117, is that your handwriting there, where it
14 looks to be N slash A, under the caption, limited rights
15 legend?

16 A Yes.

17 Q And then is that your N slash A again
18 underneath there, explanation of limited rights data,
19 identification method used?

20 A Yes, right. Correct.

21 Q And I guess turning over to page 118, up at
22 the top of the page, restricted rights legend. Is that

1 and then parens 2 little i at the bottom of 116, it
2 speaks there in terms of technical data pertaining to
3 items, components or processes developed at private
4 expense.

5 A You are reading under limited rights.

6 Q Yes, that's what I say. And that doesn't
7 indicate there that it has to be identified anywhere
8 else, does it, when they talk about data provided,
9 developed at private expense?

10 A The section, limited rights, does not apply to
11 this contract. The section, restricted rights, does not
12 apply to this contract.

13 MR. COOPER: I object to the form of your
14 question. Having looked at it, since technical data is
15 defined different than computer software under the
16 contract, and the section that you read with respect to
17 private expense relates to technical data as opposed to
18 computer software.

19 MR. KELLOGG: Off the record.

20 (Discussion off the record.)

21 MR. KELLOGG: Mark this as Exhibit 6.

22 (The document referred to

1 testimony. was marked Videnieks Exhibit
2 MR. COOPER: I'm No. 6 for identification.)

3 BY MR. KELLOGG: (Resuming)
4 Q Mr. Videnieks, I show you what has been marked
5 here as Exhibit 6 for your definition. What appears to
6 be article 12, labelled data rights, is this, in your
7 recollection, the data rights provision that was
8 contained in the original RFP that was agreed to be
9 deleted as reflected in Mr. Kelly's letter to you of
10 March 1 of '82?

11 A Yes.

12 Q And what is there in that language that would
13 have prevented the contractor from selling the materials
14 to a third party?

15 MR. COOPER: Objection, the question calls for
16 a legal conclusion. I don't mind you asking the witness
17 which sections he understood from his conversations
18 Inslaw was concerned about.

19 MR. KELLOGG: I take it, as included in all my
20 questions of this sort to him about his understanding of
21 the contract, I recognize he's a nonlawyer. I was only
22 asking his understanding in light of his earlier

1 testimony.

2 MR. COOPER: I'm just trying to preserve the
3 record, Mr. Kelly. I'm not trying to interrupt your
4 question.

5 THE WITNESS: I don't know which particular --
6 I mean, I would be happy to guess what Inslaw thought.

7 BY MR. KELLOGG: (Resuming)

8 Q Okay, I just want your best recollection.

9 A I think they may have thought, may have had
10 problems with the sentence which begins with, the
11 contractor shall neither retain nor produce for private
12 or commercial use any materials furnished or produced
13 under this contract.

14 To the best of my recollection, that may have
15 been the clause, the sentence, that they had a problem
16 with. And --

17 Q Mr. Hamilton calls my attention to the fact
18 that in the deposition that Mr. Kelly gave in this case
19 he indicated he testified that it was his recollection
20 that in the course of these negotiations involving
21 yourself among others, leading up to the execution of
22 this contract, in March of 1982, that he used the

1 example on this data rights issue, among other things,
2 that Inslaw, for example, wanted the right to be able to
3 market its software to the Pentagon.

4 And that was one of the things they were
5 trying to preserve.

6 Do you recall Mr. Kelly using such an example
7 in any of the meetings that you attended?

8 A I don't recall that, no.

9 Q Would you deny that he used such an example?

10 MR. COOPER: Objection.

11 THE WITNESS: If I don't recall, I don't
12 recall. I can't deny, I don't think.

13 BY MR. KELLOGG: (Resuming)

14 Q Now, I've got before me what appears to be the
15 full RFP. As a device to aid and expedite this, do you
16 have a recollection, as you sit there, Mr. Videnieks, as
17 to where the clause that became clause 74 in the final
18 contract, where within the RFP that would normally be
19 included?

20 A Towards the back.

21 MR. KELLOGG: Let's go off the record.

22 (Discussion off the record.)

1 BY MR. KELLOGG: (Resuming)

2 Q Now, let's move on for a moment.

3 You get the contract signed. In the course of
4 these discussions, I believe you indicated that Inslaw
5 initially, their cost proposal was somewhere, \$15-, 16-,
6 17-, \$18 million, I forget what you testified, but in
7 any event you said it was 5 or 6 or more million above
8 what budgetary requirements that the government had; is
9 that correct?

10 A That's correct.

11 Q And ultimately, through the negotiation
12 process, it was reduced, their cost proposal was reduced
13 to the \$10 million roughly that was set forth in the
14 contract; right?

15 A Right.

16 Q And eventually Exhibit 4, I think, shows what
17 the exact numbers were.

18 And in arriving at that reduced number, did
19 the Department undertake to agree to provide some
20 personnel in some of the sites where the software was
21 going to be installed in order to reduce the manpower
22 demand on Inslaw so that its costs could be reduced?

1 A I have difficulty understanding your question,
2 because I don't think we furnished people for
3 performance of the contract.

4 Q Well, my question to you is, do you recall in
5 the discussion, in the course of this process, of Inslaw
6 attempting to bring its costs down and reach an
7 agreeable number, an agreeable price for the contract?
8 Do you recall the government agreeing to
9 provide some on-site personnel to perform some parts of
10 the service that Inslaw had originally intended to
11 perform in order to cut the cost down?

12 A No, what the government -- I remember Inslaw
13 bringing up the point about the availability of systems
14 managers, that they would be there at the -- to meet the
15 implementation schedule, to be there around that time,
16 to be on board.

17 Some had not been hired yet, but that is not
18 -- they were to be government personnell working for the
19 government and not performing the contract effort, or
20 anything envisioned under it.

21 Q I understand. But did the government agree,
22 as part of the negotiation process, agree to provide

1 those systems managers in place at the appropriate time
2 in order to reduce Inslaw's costs?

3 A No, sir. Inslaw expressed concern that the
4 implementation schedule under the contract would be
5 negatively affected by the government not having hired
6 all of the systems managers yet.

7 The government was in the process of hiring
8 people identified as systems managers. And then Inslaw
9 was afraid that this might not happen, and could impact
10 negatively on their contract performance.

11 Q And one way it would impact negatively is that
12 it would drive their costs up; isn't that right?

13 MR. COOPER: Objection. Are you asking the
14 witness, is that what they said, or are you now asking
15 him to speculate?

16 BY MR. KELLOGG: (Resuming)

17 Q I'm asking you, is that in sum and substance
18 what they said and why they were concerned about it?

19 A I imagine Inslaw was probably concerned about
20 costs and fee, because fee was linked to performance
21 also.

22 Q And to the extent that their costs were forced

1 up, it might adversely affect their fee, too, isn't that
2 right?

3 A A fee was also linked to meeting schedule.

4 Q All right. And I take it the department did
5 assure them, in response to these expressions of
6 concern, that it would make sure that these system
7 managers were hired in a timely manner?

8 A I think that is reflected in the contract; if
9 not in the contract itself, then the last -- the latest
10 correspondence preceding the contract award.

11 Q And do you know from your own knowledge, in
12 fact, as the contract went forward, whether the
13 government fulfilled that commitment?

14 A I really don't know for a fact whether there
15 were problems in hiring these people or not, or whether
16 in order for any event to affect contract performance,
17 there has to be a demonstrated -- the effect has to be
18 demonstrated in this procedure that kicks in.

19 Q Was it demonstrated to your understanding?

20 A I don't remember the nonavailability of
21 program managers becoming an issue. I don't
22 specifically remember having to modify the contract, and

1 I don't remember the contractor requesting that the
2 contract be modified for that reason.

3 Q But you do recall that in the negotiation
4 process that led up to the contract that the government
5 did make that assurance that they would get these people
6 on board in a timely fashion?

7 A As I say, I think that provision is reduced to
8 writing.

9 MR. KELLOGG: Let's mark this, and these are
10 two documents together, as Videnieks Exhibit 7. Mark
11 the first one 7, and make the next one behind it 7A

12 (The documents referred to
13 were marked Videnieks
14 Exhibits No. 7 and 7A for
15 identification.)

16 BY MR. KELLOGG: (Resuming)

17 Q Now, Mr. Videnieks, if you just look there at
18 what has been marked as 7 and 7A, and then I have some
19 questions for you.

20 A Yes, I've looked at 7A, but it's a fairly
21 lengthy document. It appears to be Inslaw's internal
22 correspondence, which I am not familiar with.

1 Q Well, my question is, do you recall having
2 seen either Exhibit 7 or 7A before?

3 A I think I've seen -- I've seen them, but I
4 have not been involved in any detailed discussions. I
5 don't even know whether I have read very carefully 7A.

6 MR. COOPER: If I might go off the record for
7 a second?

8 (Witness confers with counsel.)

9 THE WITNESS: I definitely did not see this
10 around the timeframe when it was done, April 1. It's
11 probably in my file, which is three big boxes. But I
12 couldn't very well repeat this. If you asked me to
13 summarize this, I couldn't.

14 I probably glanced at it, and that was it. I
15 don't know when I would have. I don't know when it
16 actually became a part of my file, if it is in that file.

17 BY MR. KELLOGG: (Resuming)

18 Q Just so that the record is clear in a general
19 sense, Exhibit 7 is a cover letter from an attorney
20 Roderick Hills to Stanley Morris, who is an associate
21 deputy attorney general, and it's dated April 2, 1982.

22 And it purports to enclose a memorandum which

1 is marked as 7A, and is dated April 1, 1982, and it is
2 from Mr. Hamilton to a Mr. Rogers, who, for the record,
3 I will indicate is an associate in Mr. Hill's law firm,
4 describing various enhancements to the PROMIS software,
5 and issues relating to that.

6 Now, Irrespective of whether you may have ever
7 seen 7A, the Hamilton memorandum, did there come a time
8 when you became aware that this issue and this memo had
9 been submitted to Mr. Morris by representatives of
10 Inslaw?

11 A I think somewhere along the line over the past
12 several years a copy of this attachment worked itself to
13 me and got in my file.

14 Q When, to the best of your recollection, did
15 you first learn that Inslaw, through Mr. Hills, had
16 contacted Mr. Morris about this issue April 2, 1982?

17 A I can't even begin to guess.

18 Q Would it have been within 30 days of that, do
19 you think?

20 A I can't begin to guess within days, months or
21 years. I guess I can, years; it's '82. I don't know
22 when. I was not party to that exchange of documents.

1 Q I'm trying to find out when, if at all, when
2 you became aware.

3 A It's in my file. I recognize -- it's attached
4 to something else, maybe attached to letters written by
5 Inslaw. But it's definitely an attachment somewhere.

6 MR. KELLOGG: Mark this as Exhibit 8, please.

7 A Yes. (The document referred to
8 was marked Videnieks Exhibit
9 No. 8 for identification.)

10 BY MR. KELLOGG: (Resuming)

11 Q Mr. Videnieks, if you would just read over
12 what has been marked as Exhibit 8, please?

13 (Pause.)

14 Q Now, Mr. Videnieks, Exhibit 8 appears to be a
15 copy of three pages of handwritten notes that you made;
16 is that correct?

17 A Yes.

18 Q Now, I'm going to have to go through these
19 entry by entry here, and as it will become apparent, I
20 have reason to believe that these dates that you've got
21 on here or appear to have on here refer to 1982,
22 although it does not say that.

1 Now, looking at the first entry there, which
2 starts, 1:00 p.m. 4/14, does that say, meeting in
3 Brick's office?

4 A Yes.

5 Q And then does it have names underneath that
6 that say, Brick, Karen, Jack?

7 A Yes.

8 Q Dick, D.H., that is De capital H?

9 A Yes.

10 Q And PV?

11 A Yes.

12 Q And over at the side, to the right, does that
13 appear to say Morris?

14 A It appears to say Morris slash S.

15 Q And then underneath that to the left, does
16 that appear to say Rooney?

17 A I think it says Rose. Maybe it's Rooney.

18 Q Was Mr. Rose --

19 A Or Rosen. It could be Rosen.

20 Q Well, down to the right there, it says AAG
21 policy.

22 A Yes. Which would not have been Rooney. It

1 would not have been Rooney.

2 Q Would it have been Rose?

3 A I think so. This is a little while ago. This
4 is sometime ago.

5 Q In any event, back to the identification of
6 the people, would this have indicated that you attended
7 a meeting on April 14th at 1:00 p.m.?

8 A Yes.

9 Q And that Brick Brewer was there?

10 A Yes.

11 Q And Karen who?

12 A Krug.

13 Q And I take it Jack Rugh?

14 A Right.

15 Q And Dick DeHahn?

16 A Yes.

17 Q And PV would be yourself?

18 A Correct.

19 Q Do you recall attending such a meeting, sir?

20 A I can't recall. This is nearly eight years
21 ago. I can't recall the specific meeting. I'm not
22 saying the meeting did not take place. Obviously it

5

1 took place because I wrote it down.

2 Q As you sit here today, sir, do you have any
3 present recollection as to what year these notes relate
4 to?

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1 A I guess it was 1982.

2 Q All right, and would these notes indicate that
3 Mr. Morris was present at the meeting?

4 A I never met Mr. Morris, so I don't think he
5 was there.

6 Q All right. Might it indicate that something
7 to do with Mr. Morris was discussed at that meeting?

8 A It might.

9 Q Do you recall ever discussing any meeting with
10 these people, anything to do with the issue raised in
11 Exhibit 7 and 7A on April 2 of '82 with Mr. Morris?

12 A No.

13 Q Now if you will just read that next entry
14 beginning Monday, or Mon. 3:00 p.m. Just read that to
15 me, and I want to ask you what it means, so far as you
16 can recall.

17 A Monday, 3:00 p.m. -- negotiations at LEAA re
18 DJRS contract overruns, call Dave S., Room 1268.

19 Q All right. Now, first I would ask you whether
20 that wouldn't indicate DJRS instead of DJRS?

21 A It could be O. It could be O. It's O. It
22 should be O.

1 Q Do you recall as you sit here today who Dave
2 S. is?

3 A I believe Dave S. was a contracting officer at
4 OJRS.

5 Q Do you have a present recollection that there
6 is a separate contract between OJRS and INSLAW?

7 A Yes.

8 Q Presumably, then, this would reflect a note
9 about a meeting that you had regarding overruns on that
10 contract with OJRS and INSLAW?

11 A Yes.

12 Q Do you have any present recollection of what
13 was discussed at that meeting?

14 A My recollection is that under the OJRS
15 contract, one task concerned EOUSA, and that task was
16 for enhancements and that the contractor had notified
17 OJRS that there may be an overrun or OJRS had assessed
18 performance under the contracts and concluded that there
19 would be an overrun which would affect EOUSA.

20 Q All right. Now, moving down to this next note
21 there marked two, "tomorrow A.M. call Dave S. and set up
22 review of DJ or OJRS contract", is it your recollection

1 that you made this note in a meeting with Dave S.?

2 A No, I can't recall whether I was in a meeting
3 or as a result of a telephone conversation.

4 Q Do you recall yourself reviewing the DJRS
5 contract with Mr. Dave S.?

6 A I don't think it was with Mr. Dave S. but
7 eventually I did review that contract.

8 Q All right. Now on that next line there, "D.C.
9 contracts Task 9, Phase 2", what does that mean?

10 A One of the contracts that INSLAW had concerned
11 the D.C. Court system, and I can't recall now what Task
12 1 and Phase 2 were.

13 Q Would it be fair to conclude that, whatever it
14 was, that this D.C. Court contract was different
15 contract from the DJRS contract?

16 A It may have been, or maybe it was a distinct
17 task after that contract.

18 Q Can you read the name? It looks like a name
19 underneath Task 1, Phase 2?

20 A Bob Whiteley.

21 Q No, no, the first line immediately under Task
22 1, Phase 2. It looks like a Z.

1 A It looks like Zelenski, but I can't recall who
2 Zelenski would have been; and the second one I can't
3 read.

4 Q Move then to the next entry beginning F/U Bob
5 Whiteley.

6 A Right.

7 Q Tell us what that means.

8 A "Followup Bob Whiteley re overhead rates,
9 proposal or progress. Status --".

10 Q Are you sure it doesn't say "stress"?

11 A You're correct. "Stress need for detailed
12 look at overhead pool, people, et cetera."

13 Q Does that jog your recollection as to what
14 that -- why did you make that note?

15 A I don't know why I would have made it in April
16 but I know at one time in that time frame and
17 continuously we were concerned about ability, the
18 contractor's ability to perform the contract within
19 target costs, and there were efforts to control costs or
20 to talk to INSLAW to have them control the costs of
21 performance of this contract.

22 One of the areas in which we concentrated was

1 the overhead area. Now, I take it when you say call

2 Dave Q Well, do you recall in this early period Mr.
3 Brewer ever raising the issue with you of whether
4 INSLAW's overhead costs might be out of line?

5 A I don't recall that. I think I was, I and the
6 audit staff people, were the ones concerned with
7 overhead more than Brewer would have been.

8 Q Well, would this be a note that you made to
9 yourself to call or speak to Bob Whiteley in the future?

10 A It means a followup. It means a followup to a
11 prior attempt at communication or a prior conversation.

12 Q But would it reflect that you actually talked
13 to him and this was said, or this was a note to yourself
14 that you should followup and say these things to him?

15 A It may be a note to myself.

16 Q Move to the next one, again outlined in an
17 outline and again marked 4/14.

18 What does that indicate to you?

19 A "Called Dave S., telephone number. He will
20 talk to Stan (the chief)" and then "-- going to INS
21 Friday re 1 and 2 above. He will call back, call me
22 back."

1 Q All right. Now, I take it when you say call
2 Dave S., that's the same Dave S. at OJRS that you
3 referred to up above earlier?

4 A Correct.

5 Q He apparently told you that he will talk to
6 Stan?

7 A Who was his boss.

8 Q He was going to talk to him about the points
9 that you had up above there, number 1 and number 2,
10 namely the overrun on the OJRS contract and the need to
11 review the OJRS contract?

12 A Right.

13 Q Now, do you recall who Stan is, what his last
14 name is?

15 A I believe his last name is Stirman,
16 S-t-i-r-m-a-n.

17 Q He was being transferred to the immigration
18 service?

19 A Yes. I believe he is currently a contracting
20 officer at the INS. He may have been at OJRS and
21 transferred from there to INS.

22 Q Now, down to the next entry there marked E.

1 Could you read what that says, please?

2 A "Discussed INSLAW's PROMIS 2 memo. DeHahn
3 said that the Civil Division will probably get the
4 action. Termination for convenience discussed. I
5 advised against it. DJRS discussed. See 1 and 2 above."

6 Q Again, can we assume it is DJRS?

7 A Yes. I don't know why I kept saying D, but it
8 is D.

9 Q All right. Now, what is your recollection
10 that that is all about?

11 A I don't know which PROMIS 2 memo we're talking
12 about. It could very well be the one that was shown
13 earlier as one of the exhibits here, but, like I say, I
14 don't recall it.

15 Q You say could very well be the one. I take it
16 you're referring to the one marked 7A?

17 A It could be. It could be. It appears to be
18 entitled that.

19 MR. COOPER: It's not entitled.

20 THE WITNESS: Well, it's some memorandum.

21 BY MR. KELLOGG: (Resuming)

22 Q 7A is entitled PROMIS '82, and your notes says

1 "PROMIS 2".

2 A There may be a different memorandum, then, but
3 apparently it could have been a memorandum of that
4 nature and I don't specifically recall it.

5 Q Well, now, when you say here in your note
6 discussed INSLAW's PROMIS 2 memo, with whom? Obviously,
7 I take it you discussed it with DeHahn?

8 A Right.

9 Q Do you recall such a meeting discussing this?

10 A Not specifically, no, and I cannot recall who
11 else would have been there.

12 Q Do you think anyone other than DeHahn would
13 have been present at such a discussion?

14 A Normally I would not meet with DeHahn by
15 myself.

16 Q All right. Now, where did DeHahn work? What
17 was his role?

18 A I believe he was an attorney but in a
19 nonattorney slot with Justice Management Division at
20 that time.

21 Q So he work, so far as you recall, at EOUSA?

22 A Eventually he worked at EOUSA. I don't think

1 he worked with EOUSA at that time.

2 Q When your note indicates that DeHahn said that
3 Civil Division will probably get the action, what do you
4 think that meant?

5 A I think it probably meant they would receive
6 the PROMIS 2 memorandum for review.

7 Q Don't you think it probably means that they
8 would receive whatever action that Mr. Morris might
9 request in response to the PROMIS 2 memo?

10 A No.

11 Q Is it your testimony that your belief is that
12 this had nothing to do with the request of Mr. Morris
13 that is reflected in Exhibit 7 and 7A?

14 A It's my testimony that the PROMIS 2 memo as in
15 front of DeHahn at that date was to be referred to the
16 Civil Division for action. Apparently it contained some
17 legal issues which would normally be handled by the
18 Civil Division.

19 Q Well, I'm really asking you a question. I
20 mean, I tell you it is a fact and Mr. Morris has
21 testified that in response to receipt of this letter,
22 Exhibit 7, and the memo, 7A, he did make inquiry of the

1 Civil Division for preparation of their response and
2 certain research involved.

3 Q Now, does that refresh your recollection any
4 as to whether or not this meeting that you have a note
5 here of could have been referring to that inquiry by Mr.
6 Morris?

7 A I don't know anything about Morris. I was not
8 in his deposition. I don't know what he said to who or
9 why.

10 Q I understand you are not Mr. Morris, but your
11 testimony is you have no recollection that this note was
12 made in response to a discussion of what was anticipated
13 then to be a request from Mr. Morris?

14 A No, I did not function at those levels. I was
15 administering the contract at a working level basically,
16 and these are very high government officials.

17 Q Now the next phrase here, "termination for
18 convenience discussed", now what contract do you think
19 you were discussing terminating for convenience?

20 A I don't recall. Obviously at this point I
21 don't think it was the PROMIS contract.

22 Q Well, this contract was informally referred to

1 as the PROMIS 2 contract, wasn't it?

2 A No, sir.

3 Q Was there another contract referred to as a
4 PROMIS 2 contract?

5 A No, sir.

6 Q So as far as you are concerned, there was
7 never any contract that you know of referred to as the
8 PROMIS 2 contract?

9 A Yes, sir.

10 Q All right. As you sit there today, do you
11 have any recollection whatsoever what contract it was
12 that you were discussing terminating for convenience?

13 A I don't specifically recall. I would -- since
14 this was '82, it was a month or so into the life of this
15 contract, that we were no talking about terminating the
16 PROMIS contract.

17 MR. COOPER: Could you tell him which one you
18 think it might relate to?

19 THE WITNESS: It may be the OJRS contract. In
20 other words, if there was a serious overrun over there,
21 that would be one of the courses of action.

22 BY MR. KELLOGG: (Resuming)

1 Q Now, but this note here would seem to be tied
2 together, wouldn't it, with the statement "discussed
3 INSLAW's PROMIS 2 memo"?

4 MR. COOPER: Objection.

5 BY MR. KELLOGG: (Resuming)

6 Q You tell me that's not a fair inference?

7 MR. COOPER: You're not talking inference.
8 You're talking facts, and the witness just gave you his
9 best recollection of what the statement relates to.

10 BY MR. KELLOGG: (Resuming)

11 Q I'm trying to get your best recollection as
12 refreshed as I can.

13 You've testified that the first line there
14 says "discussed INSLAW's PROMIS 2 memo", and then it
15 says, the next line, "DeHahn says that Civil Division
16 will probably get the action".

17 I take it that that second line presumably
18 refers to action on the PROMIS 2 memo; right?

19 A I think that's what DeHahn meant.

20 Q Then my question is is it your testimony that
21 termination for convenience discussed that that does not
22 relate to anything to do with the PROMIS 2 memo?

1 again your handwriting, N slash A?

2 A Yes.

3 Q So it's your testimony, is it, that by putting
4 those three markings in there, NA for not applicable,
5 you intended to delete the application of this entire
6 limited rights section, beginning on page 116, paragraph
7 parens 2?

8 A S and Inslaw agreed that we have unlimited
9 rights to all items delivered under this contract. And
10 Inslaw agreed to delete the applicability of any sort of
11 limitations or restrictions.

12 And it was my intent to do so, and did that by
13 marking out -- by putting these NAs on the clause.

14 MR. KELLOGG: I guess this is a good time to
15 break for lunch.

16 (Whereupon, at 12:55, a luncheon recess was
17 taken.)

18

19

20

21

22

1 AFTERNOON SESSION

2 (2:00 p.m.)

3 Whereupon,

4 PETER VIDENIEKS

5 resumed the witness stand and, having been previously
6 duly sworn by the Notary Public, was examined and
7 testified further as follows:

8 EXAMINATION (RESUMED)

9 BY MR. KELLOGG:

10 Q Mr. Videnieks, you are still under oath. We
11 are back on the record after lunch.

12 Now you have testified here that Mr. Merrill
13 in a January 14, 1982 letter to you, that was marked as
14 Exhibit 3, in response to the questions that you had
15 sent him, that he made the assertion that Inslaw, the
16 software Inslaw was going to provide had some privately
17 funded enhancements in it.

18 I guess my question is -- strike that.

19 And you've testified also that the contract as
20 ultimately executed March 16, 1982, gave to the
21 government unlimited data rights as a result of this
22 clause 74 that was marked as Exhibit 5, correct?

1 A Correct. I don't recall the number of

2 Q And I guess my question to you is, from the
3 time that Inslaw responded on January 14 of '82 that
4 there were privately funded enhancements in its
5 software, until the execution of the contract, March 15,
6 1982, in which you say there were these unlimited data
7 rights agreed to, who did you deal with from Inslaw in
8 these negotiations?

9 A Dean Merrill, Jim Kelly, John Gizzarelli. I
10 don't recall Bill Hamilton being there. That's about it.

11 Q So to the best of your recollection, at any
12 rate at this time, it was these three people, Dean
13 Merrill, Jim Kelly and John Gizzarelli?

14 A I'm trying to think who else may have been
15 there. I don't recall whether Murray Hannon was there
16 or not.

17 Q All right. Now, to the best of your
18 recollection, how many meetings did you have or did you
19 attend with any of these people from Inslaw between
20 January 14, 1982 and March 15 or 16, when the contract
21 was executed?

22 A There were numerous telephone conversations,

1 primarily with Kelly. I don't recall the number of
2 meetings, but it was a fluid process of give and take
3 during those two months.

4 Q All right, so would it be fair to infer from
5 that that your primary contact from Inslaw was Jim Kelly
6 during this negotiation period?

7 A Mine, yes.

8 Q You say there were a number of meetings. Can
9 you give me an idea of roughly how many? Are we talking
10 about more than a dozen?

11 A Including telephone conversations also?

12 Q Just meetings, face-to-face meetings is my
13 question right now.

14 A I can't recall; I really can't. There were
15 more telephone calls, obviously, maybe on a daily basis,
16 or even more than daily basis at times.

17 And if one would -- I don't know whether the
18 -- I think when Inslaw submitted the initial proposal,
19 we met for the first time at Inslaw, basically asking
20 them to rethink it and resubmit it.

21 I don't know whether that was within the time
22 period that you mentioned or not. And the meetings

1 lasted through right to the date of award of the
2 contract. the contract, there was an agreement that the
3 government Kelly would come to my office individually.
4 Also there were meetings where groups of people were.
5 But I can't begin to guess. not right?

6 Q However meetings there were, how many times do
7 you recall discussing with Mr. Kelly, either face to
8 face or on the telephone, and again, I'm focusing now
9 just in this period between January 14, 1982 and March
10 16, '82, when the contract was signed, how many times do
11 you recall discussing with Mr. Kelly anything to do with
12 data rights?

13 A I remember discussing all issues, all terms
14 and conditions of the contract, as they came up for
15 negotiations during that time period.

16 I don't recall specifically when during that
17 time period I would be limiting the discussion to data
18 rights, or even including the data rights issue in a
19 general situation, except I can say that during that
20 two-month period, or even a broader period, those
21 negotiations took place.

22 Q Well, when I take it, as you sit here today, I

1 mean you have a clear recollection that as of the time
2 you signed the contract, there was an agreement that the
3 government would obtain unlimited data rights to the
4 software that was provided, or to be provided, by Inslaw
5 under the contract; isn't that right?

6 A Very clear.

7 Q My question is, how many times do you recall
8 ever discussing that subject prior to the execution of
9 the contract with Jim Kelly?

10 A I can't recall a number.

11 Q Would it be as many as a half a dozen, do you
12 think?

13 A I don't want to guess, sir.

14 Q I take it it would be less than a hundred,
15 wouldn't it?

16 MR. COOPER: Objection, the question calls for
17 speculation, and the witness has stated he can't recall
18 precisely how many meetings.

19 MR. KELLOGG: Objection is noted.

20 You know I have the right to test his
21 recollection.

22 MR. COOPER: What validity does it have if you

1 ask him to guess. He's under no obligation to try to
2 guess for you.

3 MR. KELLOGG: I'm trying to test his
4 recollection. And you know as you sit there that I'm
5 entitled to do that.

6 MR. COOPER: Well, ask him if he recalls.
7 Don't ask him to guess, if you would.

8 MR. KELLOGG: I'm not asking him to guess.

9 BY MR. KELLOGG: (Resuming)

10 Q I take it that you do recall that you did not
11 have in excess of a hundred discussions with Kelly about
12 this data rights issue during this period of times,
13 isn't that right, sir?

14 A I don't think I had a 100 discussions with
15 Kelly on that issue.

16 Q Do you think you might have had as many as 50?

17 A I don't know.

18 Q You could have?

19 A I could have. It could have been mentioned
20 off and on. We dealt on an almost daily basis over a
21 period of two months, about six years ago, sir.

22 Q Do you recall any specific conversation --

1 A Also, I could have talked with Dean Merrill,
2 or anybody for that matter. I would be purely guessing
3 to try to put any kind of estimate on that.

4 Q Let me ask my questions.

5 Do you recall any specific conversation either
6 with Kelly or Merrill or anybody else on behalf of
7 Inslaw, in which they agreed to concede this point, that
8 is, the unlimited data rights to the government that you
9 say you have a clear recollection was agreed to?L

10 A At one point or another, I went through the
11 contract, the finalized form of the contract, and
12 discussed with Inslaw personnel, probably Kelly, point
13 by point, every condition in that contract.

14 So there was a clear meeting of the minds that
15 every term was understood. And only after that did both
16 sides put the contract through their respective channels
17 and sent it on.

18 Q All right. So my question is, do you have a
19 specific recollection of discussing and coming to
20 agreement with Kelly about the unlimited data rights
21 issue; just that issue?

22 A Yes, as a part of agreeing on the total

1 contract.

2 Q And do you remember what Kelly said?

3 A Well, yes, I think the whole issue, the data
4 rights issue, reached -- became a prominent point in
5 negotiations fairly close towards -- in the days
6 preceding the final execution of the contract. And it
7 was a group processe.

8 There was actually a point on the negotiation
9 table, similar to where we sit here, and the data rights
10 issue was discussed by numerous personnel in detail, and
11 as a result of that, we moved that language from the
12 RFP, and there was a clear understanding that we had
13 unlimited rights.

14 Q And your recollection is that people on behalf
15 of Inslaw expressed some concern about something to do
16 with the data rights issue?

17 A Marketability. They were concerned about the
18 government prohibiting, which I think is what the RFP
19 language will read when we get it, prohibiting Inslaw to
20 market PROMIS independently to other sources.

21 Q To other customers?

22 A Yes.

1 Q All right, and it was your understanding that
2 the modification that you agreed to would have resulted
3 in Inslaw's retaining the right to market it to
4 third-party customers?

5 A And us having unlimited rights.

6 Q Now, turn if you will to Exhibit 5, the copy
7 of clause 74 as it was contained in the contract.

8 Now I'm going to try to understand precisely,
9 or as precisely as I can, what it is that your
10 understanding was.

11 What was it you understood the contract gave
12 unlimited rights to the government in?

13 A Shall I read?

14 Q Well, I'm asking for your recollection. I can
15 read the contract. I'm just asking for your --

16 A That is my recollection, what is written there.

17 Q Written where?

18 A The clause on -- government's rights,
19 unlimited rights, page 115, clause 74.

20 Q Clause 74?

21 A 74.

22 Q But you're talking about specifically it would

1 subparagraph parens little b, government's rights?

2 A Right. you say that you learned for the first

3 time. Q Number one, unlimited rights? thought that you

4 had. A Now Yes. ed, back here in Mr. Merrill's letter to

5 you. Q Is it your understanding that that clause

6 there gave the government unlimited rights in technical

7 data -- strike that -- in software that Inslaw may have

8 developed with private source funding? ng that there was

9 some A Computer software required to be originated or

10 developed under a government contract, or generated as a

11 necessary part of performing the contract. law took that

12 position. If it's a necessary part of the performing

13 contract, and it's unlimited under the contract, then

14 unlimited rights. taver is delivered under the contract.

15 Q Do you contend, or is it your understanding,

16 that if there were any privately funded enhancements

17 that Inslaw had made to the software, is it your

18 understanding that the contract required for its

19 performance that Inslaw provide the government with

20 those private funded enhancements? re data rights clause

21 A We did not request -- we learned for the first

22 time about these privately funded enhancements, or it

1 became an issue, sometime after the contract award.

2 Q Well, you say that you learned for the first
3 time, but as I have pointed out, and I thought that you
4 had acknowledged, back here in Mr. Merrill's letter to
5 you, dated January 14, 1982, which is marked as Exhibit
6 3, at page 9, Mr. Merrill indicated there that in
7 response to the question, what proprietary rights are
8 you talking about, he responded by saying that there was
9 some privately funded enhancements.

10 A There was one point in a two-month period,
11 lengthy negotiations, that at that time Inslaw took that
12 position.

13 Q When the contract was executed, it was our
14 agreement that whatever is delivered under the contract,
15 we would have unlimited rights to under the contract.

16 Q Well, Mr. Videnieks --

17 A You don't have everything there. You are
18 presenting selective information.

19 Q Well, I take it what has been marked here as
20 Exhibit 5, I mean, this is the entire data rights clause
21 as it was contained in the contract, the actually
22 executed contract, isn't it?

1 A Yes.

2 Q All right, and do you maintain, or is it your
3 understanding, that somewhere in other parts of the
4 contract that there is an actual requirement on Inslaw
5 that it deliver software containing its privately funded
6 enhancements in order to comply with its duties under
7 the contract?

8 A Section C of the contract is the work
9 statement. It tells the contractor and the government
10 what shall be done under the contract, the general
11 provisions of the contract of which clause 74 is a part
12 of, apply to the work statement of the contract.

13 Q That isn't an answer to my question, I don't
14 think.

15 What is your understanding as to whether the
16 contract as executed required Inslaw to deliver software
17 including its privately funded enhancements in order to
18 comply with the contract?

19 A Inslaw, under the contract, was required to
20 install, maintain and provide training services for
21 PROMIS. The requirement was expressed in Section C of
22 the contract.

1 Some other nonperformance oriented provisions,
2 like the general provisions or what we call boilerplate,
3 apply to the deliverable items identified in section C
4 of the contract.

5 Q Are you saying you don't recall?

6 A I said what I said.

7 Q Obviously, Mr. Videnieks.

8 A Do you agree what I said was correct?

9 Q I agree that the contract says what it says.
10 Yes, I don't dispute that the contract governs.

11 My question is, I'm asking for your
12 recollection of what took place, and your understanding.

13 A My recollection is that all terms and
14 conditions of the contract were, over a two-month
15 period, discussed in detail with the contractor; and
16 that the finally executed document represents the
17 complete meeting of the minds, and sets forth the rights
18 of the parties.

19 Q Now, with respect to the unlimited rights in
20 the software provided, is it your understanding that the
21 government, having acquired these unlimited rights, the
22 government would be entitled, under the terms of this

1 agreement, to disseminate the software to other offices
2 within the Department of Justice apart from those in the
3 United States Attorneys' offices specified in the
4 contract elsewhere?

5 A Where are unlimited rights defined?

6 Q Number seven on the first page, 114.

7 A Seven. Unlimited rights means the right to
8 use, duplicate, or disclose technical data for computer
9 software in whole or in part in any manner and for any
10 purpose whatsoever, and to have or permit others to do
11 so.

12 Q So that would mean that to the extent that the
13 government acquired unlimited rights under this clause
14 74, they would be entitled to copy that software and
15 distribute it anywhere to other offices in the
16 Department of Justice, if they saw fit?

17 A Or to other government contractors.

18 Q Just answer my question first. They could
19 distribute it anywhere within the Department of Justice
20 they wanted to?

21 A Yes.

22 Q And if they wanted to, they could distribute

1 it to any other government agency that they wanted to,
2 the Department of Defense? (Resuming)

3 A Yes, sir.

4 Q Customs?

5 A Yes.

6 Q Treasury?

7 A Yes.

8 Q They could distribute it if they wanted to
9 free of charge to the United States court system, could
10 they not?

11 A Yes.

12 Q And as a matter of fact, they could distribute
13 it to state and local governments, if they wanted to?

14 A Yes, sir.

15 Q And they could grant to those parties the
16 right for them to make copies themselves?

17 A I don't know about that.

18 Q I think it says that, and to have or permit
19 others to do so.

20 MR. COOPER: Objection, the question calls for
21 a legal conclusion. The witness has said he doesn't
22 know.

MR. KELLOGG: All right.

BY MR. KELLOGG: (Resuming)

Q And as a matter of fact, under these unlimited rights, the government would have the right to take the software and give it to IBM; isn't that right?

MR. COOPER: Objection.

THE WITNESS: What am I supposed to do with an objection?

MR. COOPER: Objection, the question calls for a legal conclusion.

MR. KELLOGG: I'm just asking for his understanding.

THE WITNESS: It's very broad language, yes.

BY MR. KELLOGG: (Resuming)

Q The answer is yes, they would be able to give it to IBM, any other competitor, whatever you wanted?

A Yes.

Q And I gather that the answer that you'd give that all of this could be done by the government under this unlimited rights clause, that could be done no matter how much private funding might have been involved by the contractor in developing a particular privately

funded enhancement; isn't that right?

MR. COOPER: Objection; the question calls for a legal conclusion.

MR. KELLOGG: I'm asking for his understanding.

MR. COOPER: You're asking for a legal conclusion.

MR. KELLOGG: I'm asking for his understanding as the contracting officer under this contract.

MR. COOPER: It calls for a legal conclusion.

BY MR. KELLOGG: (Resuming)

Q You can answer.

A To the items with respect to which we have unlimited rights.

Q The unlimited rights would be completely unaffected by the amount of money that might have been spent by the contractor in developing privately funded enhancements; that's my question.

MR. COOPER: You're talking about this contract, the software furnished under this contract; is that correct?

MR. KELLOGG: That's correct.

THE WITNESS: All items delivered under this

1 contract were delivered to us with unlimited rights.

2 BY MR. KELLOGG: (Resuming)

3 Q And you would have those unlimited rights,
4 regardless of whether Inslaw has spent \$10 in developing
5 privately funded enhancements contained in it, or
6 whether they had spent a billion dollars; isn't that
7 right?

8 A If Inslaw chose to deliver those items, and
9 agreed to the contract as written and delivered those
10 under the contract as written, yes.

11 Q Let me ask one last point on this clause 74 as
12 it was executed, Exhibit 5.

13 Now, do I understand you correctly, Mr.
14 Videnieks, that your understanding and what you believe
15 the parties intended, was that this entire section that
16 would begin on page 116, towards the bottom, with the
17 parens 2, limited rights, an entire section extending
18 all the way over to I guess it would be --

19 MR. COOPER: If you want to pick up the
20 restricted rights portion, I think it's over to 118.

21 BY MR. KELLOGG: (Resuming)

22 Q I guess my question is, your testimony is that

1 the parties intended, in your view, to exclude
2 everything in this subparagraph parens 2, marked limited
3 rights, starting at the bottom of page 116, and
4 extending down to I guess the bottom of -- extending
5 down to just before parens 3, marked restricted rights,
6 on page 117; is that right?

7 A As being nonapplicable, yes.

8 Q Now, how about the subparagraph 3 there,
9 restricted rights? Did the government have any
10 restricted rights?

11 A Also, it's nonapplicable.

12 Q So that again, that would be the deletion if
13 you will will continue right on page 117, all of page
14 118, all of page 119 --

15 MR. COOPER: I know you're not trying to be
16 unfair to the witness, but I think in the middle of page
17 118 you have a subsection C there which is a different
18 provision.

19 MR. KELLOGG: All right.

20 MR. COOPER: I think it would be subparagraph
21 3 and 4.

22 BY MR. KELLOGG: (Resuming)

1 Q So that it continues on page 118, I guess I
2 see there where it starts. Paragraph 4, parens 4, no
3 legend shall be marked on -- you didn't intend to delete
4 that, I take it?

5 A I think you should probably be looking for C.
6 It's deleted up to C.

7 Q So starting where it says, material covered by
8 copyright?

9 A Yes.

10 Q That was not deleted?

11 A Right.

12 Q Is there any particular reason, sir, that you
13 just marked N slash A in the blanks relating to limited
14 rights legend and restricted rights legend, as opposed
15 to either marking not applicable to the other paragraphs
16 of the clause or striking them out with a line or
17 something?

18 A No particular reason, except that I think that
19 if one were to limit rights and restrict rights, the
20 data would have to be identified, and that would be the
21 place where it would be identified.

22 Q Except that if you look at subparagraph two,

1 A Can't terminate a memo, sir.

2 Q I understand that.

3 MR. COOPER: Counsel, object to the question
4 because it is misleading, and you haven't established
5 any foundation that the PROMIS '82 memo, which has been
6 denominated Exhibit 7A, relates in any way to the
7 Executive Office PROMIS implementation contract, and you
8 are suggesting that it does in your question to the
9 witness. I don't think you have laid a foundation for
10 that point.

11 BY MR. KELLOGG: (Resuming)

12 Q Did you ever recall hearing the OJRS contract
13 with INSLAW referred to as the PROMIS contract?

14 A I don't think I did.

15 Q From what you know about it, do you think it
16 would have been referred to as the PROMIS contract?

17 A I'm familiar with the one task under that
18 contract to the extent that I did review the language in
19 the contract pertaining to that task, and that dealt
20 with PROMIS enhancements.

21 Q All right. Now, your note indicates here that
22 as regards termination for convenience being discussed

1 that you advised against it; correct?

2 A That's what the note indicates.

3 Q Do you think that you would have been -- or,
4 first of all, do you recall your advice being solicited
5 regarding whether to terminate for convenience the OJRS
6 contract?

7 A I don't recall specifically, but it could have
8 been. This note may refer to the termination of that
9 contract or that the termination of that contract was
10 discussed.

11 Q All right. Now, out at the left of your note
12 you marked up there by "discussed INSLAW's PROMIS 2
13 memo", you marked with a circle and a letter A, and then
14 down there farther down you have a letter B.

15 Now, what does that B refer to as you look at
16 it now?

17 MR. COOPER: I think what you're getting at,
18 just so the witness isn't misled, what line of his notes
19 does the B refer to?

20 MR. KELLOGG: Yes.

21 MR. COOPER: What would be the first line that
22 relates to the letter B?

1 THE WITNESS: The first line could be the DJRS
2 parenthetical expression, or it could as well be DJRS
3 contract discussed. I can't, at this point I can't
4 tell. The B appears to be more below the line than
5 above the line.

6 BY MR. KELLOGG: (Resuming)

7 Q Well, in any event, after the line that has
8 the phrase "I advised against it", it does say, "DJRS
9 contract discussed, see 1 and 2 above." Is that what
10 that says?

11 A Right.

12 Q It's your testimony that as best as you can
13 recall you still think the termination for convenience
14 being discussed and referred to above that would have
15 related to the DJRS contract?

16 A Which line are you referring to?

17 Your question is which contract, in my
18 opinion, in my recollection, that termination for
19 convenience discussed, that phrase applies to?

20 Q Yes.

21 A I can't specifically recall, but I think it
22 probably concerns the DJRS contract.

1 Q Even though you've got the note about the OJRS
2 contract being discussed after you've stated termination
3 for convenience discussed?

4 A Yes.

5 A Yes.

6 Q I take it that refers to the OJRS contract?

7 A I think so.

8 Q Turning to the second page of your notes, what
9 does the next entry there marked C, what does that say?

10 A DC contract discussed; phase two proposal
11 under technical evaluation. EGUS not clear whether they
12 will proceed.

13 I told them about Kelly's call that delay
14 slash noncontinuation will affect overhead rates. Jack
15 Hugh and Brick will meet with DC people Thursday to
16 decide what to do.

17 Possible alternative, take one of phase two
18 only.

19 I think we are talking about three contracts.
20 The DC contract must have been a separate contract.

21 Q All right, and again, would it be apparent
22 that this discussion that you've recorded here in these

1 Q Now the parenthetical phrase you referred to,
2 quote, apparently, Hamilton agreed to put a lid on EOUSA
3 task and define a deliverable; however, now they're
4 trying to back out.

5 A Yes.

6 Q I take it that refers to the OJRS contract?

7 A I think so.

8 Q Turning to the second page of your notes, what
9 does the next entry there marked C, what does that say?

10 A DC contract discussed, phase two proposal
11 under technical evaluation EOUSA not clear whether they
12 will proceed.

13 I told them about Kelly's call that delay
14 slash noncontinuation will affect overhead rates. Jack
15 Rugh and Brick will meet with DC people Thursday to
16 decide what to do.

17 Possible alternative, task one of phase two
18 only.

19 I think we are talking about three contracts.
20 The DC contract must have been a separate contract.

21 Q All right, and again, would it be apparent
22 that this discussion that you've recorded here in these

1 notes would have at least included Mr. DeHahn and
2 perhaps others that you don't know who; is that right?

3 A Yes. I can't say as to whether DeHahn was still
4 present or not.

5 Q But would you think, in light of the reference
6 there to JR and Brick in this note C, do you think it's
7 likely that they were present at this part of the
8 meeting?

9 MR. COOPER: Objection, counsellor, you
10 haven't established a foundation that this was a meeting
11 as opposed to telephone calls or as opposed to Mr.
12 Videnieks' notes of several telephone calls and/or
13 meetings.

14 I don't think there has been any testimony
15 that that is clearly established.

16 BY MR. KELLOGG: (Resuming)

17 Q You have a note at the beginning of the whole
18 thing that says, DC contract discussed. And it's marked
19 C.

20 It sure looks like it would be a continuation
21 of a discussion that was begun at point A; wouldn't that
22 be fair, Mr. Videnieks, you tell me?

1 neat. So this could have been a summarization of events.

2 Q And you don't know, as you sit here, you just
3 can't recall whether this reflected a meeting that you
4 attended, or a telephone conversation, or some summary
5 of events?

6 A I don't like -- on most issues under this
7 contract, there was a series of telephone calls and
8 meetings surrounding issues as they arose, and that was
9 the case here.

10 Q All right. Move down to entry D. Does that
11 say, pilot contract discussed?

12 A Yes.

13 Q And would it appear that this is yet another
14 contract?

15 A It's another contract.

16 Q So if you include the PROMIS implementation
17 contract one that is the focal point of the lawsuit,
18 that may not have been discussed but that's one
19 contract.

20 Second, you've got the OJRS contract.

21 A Right.

22 Q Third, you've got what is referred to here as

1 neat. So this could have been a summarization of events.

2 Q And you don't know, as you sit here, you just
3 can't recall whether this reflected a meeting that you
4 attended, or a telephone conversation, or some summary
5 of events?

6 A I don't like -- on most issues under this
7 contract, there was a series of telephone calls and
8 meetings surrounding issues as they arose, and that was
9 the case here.

10 Q All right. Move down to entry D. Does that
11 say, pilot contract discussed?

12 A Yes.

13 Q And would it appear that this is yet another
14 contract?

15 A It's another contract.

16 Q So if you include the PROMIS implementation
17 contract one that is the focal point of the lawsuit,
18 that may not have been discussed but that's one
19 contract.

20 Second, you've got the DJRS contract.

21 A Right.

22 Q Third, you've got what is referred to here as

1 a DC contract?

2 A Right.

3 Q And fourth, you have something referred to as
4 a pilot contract?

5 A Right.

6 Q So that overall, that's possibly a total of
7 four different contracts, correct?

8 A Correct.

9 Q Now, read me that note on the pilot contract.
10 What does it say after that?

11 A Pilot contract discussed. Not clear as to
12 what has been delivered. JR, Jack Rugh, and CS; I don't
13 know who CS would have been right offhand, will
14 determine completion status March 14.

15 Now, these notes must be after -- they're
16 either assembled incorrectly here, or I wrote them
17 incorrectly. But they're not chronological, it would
18 appear.

19 Q Well, but I guess, I don't know, but one
20 possibility might be that Rugh and whoever CS is were
21 going to determine what the completion status had been
22 on 314.

1 A That could have been. They'll discuss

2 Q Go ahead with the parentheses.

3 A I said to JR that cure notice could be issued
4 with partial termination and reduction of fee for
5 noncompleted items.

6 Q As you sit here, do you have any present
7 recollection of discussion this pilot contract?

8 A Not specific recollection. I do remember that
9 we discussed the pilot contract, because it was, at that
10 time, still in an open mode, and had not been closed out.

11 Q But you were not involved as a contracting
12 officer on any of these other contracts, except the
13 PROMIS Implementation contract, were you?

14 A I was involved in discussions.

15 Q I know, but you were not the contracting
16 officer?

17 A I don't think I -- I was not the primary
18 contracting officer. I may have assisted with some
19 contract modifications, but I don't fully recall that.

20 Q All right, move to the next entry there. It's
21 marked 4 slash 16. What does that say?

2 A Telephone conversation, Jack Rugh, meeting

1 today with Rooney, DeHahn and Brick. They'll discuss
2 proprietary PROMIS II letter.

3 Q Do you have any recollection of that telephone
4 conversation with Mr. Rugh?

5 A NO.

6 Q Do you think it's likely that he was telling
7 you there would be a meeting that day between Mr.
8 Rooney, Mr. DeHahn and Mr. Brewer to discuss the
9 proprietary issues raised in Mr. Hamilton's memo, the
10 PROMIS memo that is marked as 7A?

11 A Or some other letter, but that topic.

12 Q Move to the next entry, 4/19. What does that
13 say?

14 A Called DS.

15 Q Excuse me for interrupting. But just so I
16 understand, would this DS be the same person probably as
17 the Dave S that you have referred to in the first page?

18 A Could have been.

19 Q Over at OJRS?

20 A Could have been.

21 Q Go ahead.

22 A Knows nothing about negotiations. The words.

1 contracting officer who handled Inslaw contract is gone
2 for three weeks. D knows nothing about OJRS counsel
3 holding negotiations.

4 It looks like, AS --

5 Q I think it says, as far as he knows.

6 A Oh, as far as he knows, there are no
7 negotiations. I can get copy of contract. I said I'll
8 pick it up today.

9 Q All right. You think this referred to a
10 conversation with this Dave S at OJRS regarding the
11 Inslaw-OJRS contract?

12 A I think so.

13 Q And regarding any possible negotiations on
14 that contract?

15 A That apparently someone was conducting.

16 Q Turn over to the next page, please. Up there
17 at the top where it is marked, 4/19, what does that say?

18 A Tele con with Jack Rugh. There will be
19 negotiations, contract number LEAA 006-79, EOUSA task,
20 software enhancements.

21 Q Before you go any farther, you got that where
22 you say, there will be negotiations, you have the words,

1 will be, underlined.

2 Would that be a reference back to the
3 preceding entry on the prior page on the same date,
4 4/19, when this DS tells you that he doesn't know
5 whether there are any negotiations at all?

6 A I think it probably does.

7 Q So now Rugh is telling you that there will be
8 negotiations, and presumably, he's talking about the
9 same matter, the OJRS-Inslaw contract?

10 A This is for the first time that the contract
11 number appears. If indeed this is the number of the
12 OJRS contract, then that I guess would be the case.

13 Q Now move down there where it says -- does that
14 say, Don Manson?

15 A Correct.

16 Q DM, who is Don Manson?

17 A He was the program manager at OJRS on some
18 contracts, and also on the OJRS contract.

19 Q All right. Now, what's the next entry say?

20 A Monday, April 19, 1:30: OJRS library,
21 preparations. 3:00 o'clock negotiations. Negotiations
22 to be held by OJRS' counsel.

1 Q Now, do you think this is a continuation of
2 your note of a telephone conversation with JR, Mr. Rugh?

3 A It could be.

4 Q And would it be him telling you that there
5 would be meetings on these dates, that is to say, the
6 same date, 4/19, kind of a preparatory meetings in the
7 DJRS library at 1:30, and then negotiations at 3:00
8 o'clock?

9 A Normally, I would set those dates. The note
10 appears to have no delineation. There is a gap here.

11 It could be two different annotations.

12 Q Well, I noticed your next note there at the
13 bottom, at the bottom of that entry, indicates,
14 negotiations to be held by DJRS' counsel.

15 A Okay.

16 Q Wouldn't he be the one who would set the date?

17 A He would be, if he would chair the
18 negotiations, then he would set it.

19 Q And it might be that this was all being
20 transmitted to you by Mr. Rugh, isn't it.

21 A It could very well be.

22 Q Now, what's the next entry after that?

1 A Meeting with DS at Dee's office. He could not
2 locate file. Finally located at counsel's office by
3 phone. Gorman, question mark. IA -- I don't know what
4 that means, copy not available either.
5 Q I decided not to preempt 419 meeting by going
6 up to counsel's office.

7 Q Now what's the date of this entry here?

8 A April 17.

9 Q So this appears to have been made before the
10 entry at the top of the page which is marked 4/19?

11 A I can't explain that.

12 MR. COOPER: How have you concluded, counsel,
13 that the entry at the top says 4/19 as opposed to 4/17?

14 MR. KELLOGG: Maybe I'm wrong. I thought he
15 testified it was 4/19.

16 MR. COOPER: I think he would have testified
17 as to anything you told him as to dates. It's hard to
18 read it.

19 THE WITNESS: These pages apparently are not
20 assembled correctly, because we keep jumping here from
21 16 to 19 to 17. So they are not in sequence.

22 BY MR. KELLOGG: (Resuming)

1 Q Well, in any event --

2 A It's definitely not a chronological chain of
3 events here.

4 Q Do you recall meeting with this Dave S over at
5 OJRS, and trying to find the contract file?

6 A I don't -- I know I had telephone
7 conversations with them, DS. I don't recall meeting
8 with him personally; I may have. I don't recall what he
9 looks like.

10 Q Your last entry there, does that say, 4/19 JR
11 called, meeting postponed to 2:30?

12 A That's what it says.

13 Q And that would be Jack Rugh calling you?

14 A Yes.

15 Q And would that refer to the meeting that you
16 had made a note of earlier at the top of the page on
17 4/19?

18 A I don't know. I'm not putting much weight in
19 these notes because they are not assembled properly.
20 The dates are scattered all over the place.

21 Q Well, this is on the same page, though.

22 A If I made a note on the 19th, and then put a

1 Q Well, in any event --

2 A It's definitely not a chronological chain of
3 events here.

4 Q Do you recall meeting with this Dave S over at
5 OJRS, and trying to find the contract file?

6 A I don't -- I know I had telephone
7 conversations with them, DS. I don't recall meeting
8 with him personally; I may have. I don't recall what he
9 looks like.

10 Q Your last entry there, does that say, 4/19 JR
11 called, meeting postponed to 2:30?

12 A That's what it says.

13 Q And that would be Jack Rugh calling you?

14 A Yes.

15 Q And would that refer to the meeting that you
16 had made a note of earlier at the top of the page on
17 4/19?

18 A I don't know. I'm not putting much weight in
19 these notes because they are not assembled properly.
20 The dates are scattered all over the place.

21 Q Well, this is on the same page, though.

22 A If I made a note on the 19th, and then put a

note on the 17th below the 19th again, it may be right. But as Mr. Cooper points out, your first note up at the top of the page may say 4/17, not 4/19.

Q It may very well, sir.

In any event, this bottom note would appear to be a reference to Rugh calling you and telling you that the meeting he had earlier advised would be at 1:30 in the OJRS library on 4/19 was being postponed to 2:30?

A It could be.

MR. COOPER: Objection, lack of foundation. It might also have referred to the negotiation meeting which Mr. -- well, I guess that would not have been postponed.

Okay, I withdraw my objection.

(Recess.)

BY MR. KELLOGG: (Resuming)

Q Mr. Videnieks, now your notes that we have been examining you about, appear to have made reference to a meeting to take place on April 19 in the afternoon, presumably 1982, at the OJRS office; is that correct?

A Could have been a telephone conversation.

Didn't we discuss that before, trying to resolve whether

1 it was a meeting or a telephone conversation.

2 Q Well, I guess the notes don't make clear,
3 except that the bottom note there, at the bottom of the
4 third page, it says, JR called meeting postponed to 2:30.

5 A Right.

6 Q So presumably, if that's what he was talking
7 about, it was a meeting and not a telephone call.

8 A Right, but for which day.

9 Q In any event, do you recall attending a
10 meeting at the OJRS office with Mr. Rugh, Mr. Brewer,
11 perhaps this Don Manson that is mentioned in your notes,
12 and a Bob Gorman?

13 A I don't specifically remember Gorman, but I
14 remember meeting with these individuals that you just
15 named and Inslaw personnel around that timeframe around
16 approximately that subject.

17 Q I'm going to ask you some questions about what
18 you recall about that meeting, whatever date it occurred.

19 What is your recollection of what transpired
20 at that meeting?

21 A Can you be a little more specific, which area
22 you are interested in?

1 Q I would just like you to take the thing as you
2 sit here today and recall it from the beginning, to your
3 recollection.

4 What matters were discussed, who said what, to
5 the extent you can recall it here today.

6 A I can't recall who said what. In general, the
7 matters discussed were the EOUSA task under the OJRS
8 contract and funding problems associated with it, or
9 spending problems, maybe.

10 Unless I am prompted with some documents you
11 can show me, some notes I may have taken that you may
12 have, I can't remember anything really in detail; unless
13 I am prompted, I really can't.

14 Q Do you remember making any notes of your own
15 of that meeting?

16 A I usually do. The quality varies.

17 Q Well, we've got notes of yours, handwritten
18 notes, that I've examined you about, right up to
19 apparently just before the meeting on the same date,
20 assuming it took place on April 19th; but we don't have
21 any notes of that meeting.

22 Do you recall making notes of the meeting?

1 A I don't recall, but I may have.

2 Q If you did, do you recall destroying the notes
3 at anytime?

4 A No, I don't.

5 Q If you had destroyed them, do you think you
6 would recall it?

7 A I definitely would.

8 Q So you would deny that you ever destroyed any
9 notes that you made of that meeting, if you had made any?

10 A Yes, and I would not appreciate such
11 allegations, either.

12 Q I'm not alleging it, I'm just asking the
13 question.

14 Now, do you recall, as you sit there, anything
15 being discussed in this meeting about the matters that
16 were addressed in Mr. Hamilton's memorandum that was
17 marked as Exhibit 7A?

18 A Which meeting are you talking about?

19 Q I'm talking about what we assume was an April
20 19, 1982 meeting at OJRS, at which you were present
21 together with --

22 A You are assuming --

1 MR. COOPER: Hold on, objection. Lack of
2 foundation. As I recall the witness' testimony, he
3 stated that he recalled being at a meeting which
4 included both Inslaw personnel and OJRS personnel.

5 I don't know -- I don't think you've
6 established any foundation that there was indeed a
7 separate meeting at OJRS that only involved Department
8 of Justice personnel.

9 MR. KELLOGG: I didn't intend to imply --

10 MR. COOPER: The meeting on April 19th was
11 held -- oh I apologize, it was held at OJRS. Excuse me,
12 that's what you were referring to.

13 MR. KELLOGG: That's what I'm referring to.

14 THE WITNESS: The meeting in which Inslaw
15 participated?

16 BY MR. KELLOGG: (Resuming)

17 Q Yes, together with, as I said, yourself, Mr.
18 Ruhe, Mr. Brewer, Mr. Manson, a Bob Gorman, and a John
19 Wilson.

20 Do you recall such a meeting?
21
22

1 A I can't recall the faces of Wilson or Gorman.

2 Q I stand corrected. Also in attendance at this

3 meeting, according to the notes we have, were Joyce

4 DeRoy and Jim Kelly.

5 A Okay.

6 Q In any event, I understood you to say that

7 although you didn't know exactly what day it was, you do

8 remember going to such a meeting?

9 A I remember a meeting at OJRS with Joyce DeRoy

10 there.

11 Q And with Mr. Brewer and the other people I

12 mentioned?

13 A They probably would have been there, yes.

14 Q Now, my question is at that meeting at you

15 recall, do you recall Mr. Brewer discussing anything

16 about Mr. Hamilton's memo that was marked here as

17 Exhibit 7A or the issues that are involved in that, the

18 enhancement proprietary rights INSLAW claims?

19 A I don't recall discussion of that memorandum.

20 I think the issues may have been raised there. I think

21 the issues at that meeting deal with primarily were cost

22 growth under the OJRS contract, EOUSA's budgetary

1 problems, interrelationship with the new contract and
2 existing contracts.

3 You know, the other issues I don't
4 specifically recall as having been discussed. I would
5 primarily be concerned with the issues that I just
6 enumerated.

7 Q Well, you could be concerned with any issue
8 relating to --

9 A Right, primarily. I knew what my priorities
10 were at the time, and I just told you what I would be
11 concerned with.

12 Q Yes, but my question to you is if anything
13 regarding the PROMIS implementation contract that you
14 were the contracting officer on was discussed, you would
15 be concerned with that, wouldn't you?

16 A But anything gets prioritized. Priorities to
17 me at the time were cost concerns.

18 Q You would have been concerned about cost
19 concerns?

20 A Are you tell me what I would be concerned
21 about?

22 Q I'm asking.

1 A Please form it as a question.

2 Q I am. You answer the questions I put, and I
3 have to ask them.

4 A So that I can understand them.

5 Q I'll try to do that, and if I don't then I'll
6 try to make it so you do.

7 A Please do.

8 Q Would you not have been concerned also with
9 matters relating to cost under the PROMIS implementation
10 contract if they were discussed?

11 A Sure.

12 Q Do you recall during this meeting that we're
13 talking about, do you recall Mr. Brewer getting
14 particularly exercised at any point in the meeting?

15 A Not really, no.

16 Q Well, do you recall during the meeting whoever
17 the presiding official was, Mr. Gorman I gather --

18 A If he were there. I don't recall if Gorman
19 was there or not. I cannot visualize his face. Neither
20 can I visualize what Wilson looked like. I don't know
21 who the senior official was aside from Manson.

22 Q Well, whoever the official was, I take it it

1 was somebody at OJRS, from OJRS, was the presiding
2 official?

3 A Since it took place in their facilities, I
4 would assume so.

5 Q Whoever it was, do you recall Mr. Brewer
6 getting excited, for lack of a better term, to a point
7 where the person recessed the meeting and asked Mr.
8 Kelly and Ms. DeRoy to leave the room?

9 A Do I understand you to say that DeRoy and
10 Kelly were thrown out?

11 Q No, no, no. I'm just saying that do you
12 recall as a result of Mr. Brewer becoming excited and
13 emotional, for lack of any better description, at a
14 particular point in the meeting that the presiding
15 official kind of, well, the presiding official simply
16 asking Mr. Kelly and Ms. DeRoy to step out of the room
17 for a few moments until things got calmed down?

18 A No, but a practice of caucussing in these
19 kinds of meetings is common. I don't recall it.

20 Q Do you recall any instance where Mr. Kelly and
21 Ms. DeRoy were asked to step out of the room for any
22 reason during that meeting?

A No, I don't.

MR. KELLOGG: Mark this, if you will, as the next number.

(The document referred to was marked Videnieks Exhibit No. 9 for identification.)

BY MR. KELLOGG: (Resuming)

Q Take a look, if you will, at what is marked as Exhibit 9. I ask you to just read that over, please, Mr. Videnieks, to yourself.

(Pause.)

A Okay, I've read it.

Q Now, this, Mr. Videnieks, is an internal INSLAW memo regarding this meeting that we've been examining you about prepared by Mr. Kelly and Ms. DeRoy, as you can see, a couple of days after the meeting.

And as I read through it, I think I may have been mistaken in asking you about the people from OJRS having asked Mr. Kelly and Ms. DeRoy to leave the room, because it appears here in the memo itself that Mr. Gorman, Mr. Wilson and Mr. Manson, after the conclusion of their matters, left the room themselves, at least

according to the memo.

A Could be. I don't recall.

Q Do you recall any such division of the meeting dealing first with the OJRS matter and then the OJRS people leaving and a continuation of the meeting regarding the PROMIS implementation contract?

A I don't recall any. I don't recall, no, sir.

Q Well, the memo, as you can see, recites essentially about nine points that the two people involved indicate were made in this second part of the meeting, if you will, by Mr. Brewer.

Now, do you recall Mr. Brewer making any of these points that are listed in those nine points at the meeting?

A I think Brewer was concerned about cost performance under the existing contracts. He was concerned about a budget. Sometimes he gets emphatic about issues. They are serious issues.

I don't recall -- what's the word -- tirade and scurrilous referred to in the memo. Sometimes Brick makes his points emphatically like I do.

Q Do you recall Brick making these points as

1 specified here emphatically on that occasion?

2 A I don't recall specifically this heavy
3 artillery. What I do recall is discussion of the
4 interrelationship of these contracts.

5 Q So you do recall Brewer discussing --

6 A That was the reason for the meeting, yes.

7 Q -- the PROMIS implementation contract?

8 A The pilot contract, the implementation
9 contract, the QJRS contract. That was the purpose of
10 the meeting. My notes indicate that, so those topics
11 were discussed.

12 Q All right, and do you recall Mr. Brewer saying
13 early in the meeting that a lot of his concern, his or
14 his and Rugh's, arose from a memo by Bill Hamilton that
15 was circulating in the Department?

16 A That I don't recall specifically. It could be
17 this would be another memorandum aside from the one that
18 was introduced earlier, aside from this PROMIS 2
19 memorandum.

20 Q I'm not saying -- I'm assuming that it's the
21 same one, and that it would have been at the same time,
22 April 2, that this memo, 7A, was delivered to Mr. Morris.

1 A That memorandum could have been discussed. I
2 don't specifically recollect it.

3 Q Do you recall, and this is -- strike that.

4 Ms. DeRoy testified that it was her
5 recollection that at this meeting an OJRS official did
6 ask both herself and Mr. DeRoy to leave the room
7 temporarily until Mr. Brewer could regain his composure.

8 Do you have a recollection of that occurring?

9 A I don't recall that. I don't recall any
10 caucussing by either side.

11 Q And you don't recall any outburst that would
12 be consistent with such an event as this, outburst by
13 Brewer?

14 A I don't recall that, no.

15 Q But you do recall that Brewer was making his
16 points emphatically about this?

17 A I think his concerns were extensive, and he
18 was emphatic.

19 Q Do you recall him saying that his concerns --

20 A I don't specifically recall anything, but I
21 think the topics discussed were of such a nature where
22 he could very well have been emphatic.

1 Q But do you recall him saying that the source
2 of his concern was a memo by Bill Hamilton circulating
3 in the Department?

4 A No.

5 Q Did you ever have an occasion to either meet
6 or speak on the telephone with an attorney by the name
7 of James Rogers who was an associate of Mr. Hills, the
8 attorney who wrote the letter to Mr. Morris that was
9 marked here Exhibit 7?

10 A To the best of my knowledge, no.

11 Q Did anybody from the Civil Division ever
12 discuss with you aspects of the data rights issue that
13 was raised in Exhibit 7 and 7A in the letter and the
14 memo to Mr. Morris?

15 MR. COOPER: By way of clarification, counsel,
16 you mean during this period of time? For example, not
17 discussions I had with Mr. Videnieks in preparation for
18 his deposition?

19 BY MR. KELLOGG: (Resuming)

20 Q Excluding discussions, obviously, with Mr.
21 Cooper. Yes, I'm talking about in the period between
22 April of '82 and I believe it's August of '82 when Mr.

1 Morris submitted or sent a response to this inquiry to
2 Mr. Hills.

3 During that period, do you recall --

4 A I don't recall that. That does not mean --
5 that does not exclude the fact that it could have
6 happened. I don't recall, no.

7 Q Well, do you ever recall either reviewing,
8 seeing or hearing about a legal memorandum that was
9 prepared in the Civil Division by a Mr. DiPietro?

10 A I think it's gone through my hands and
11 probably it's in my file. I recognize the name.

12 MR. KELLOGG: Before I get to that, I want to
13 ask that this be marked as 10 for identification.

14 (The document referred to
15 was marked Videnieks Exhibit
16 No. 10 for identification.)

17 THE WITNESS: I have not read it, but by
18 appearance it does not ring a bell.

19 BY MR. KELLOGG: (Resuming)

20 Q You say you don't recall ever seeing it before?

21 A I don't recall. That does not mean that I
22 don't have it in my file someplace.

1 MR. COOPER: Could you identify Exhibit 10 for
2 the record?

3 MR. KELLOGG: For the record, Exhibit 10
4 consists of a cover letter from Mr. Rogers to Mr. Morris
5 dated May 26, 1982 attached to a separate letter from
6 Mr. Rogers to Mr. Morris also dated May 26, 1982, and
7 the attachment is two and a half pages long, whereas the
8 cover letter is just two sentences and one page.

9 BY MR. KELLOGG: (Resuming)

10 Q Now, your testimony is, Mr. Videnieks, that as
11 you look at these, you don't have any recollection of
12 ever having seen these before?

13 A The letterhead is familiar. Of course, the
14 Stanley Morris name and position are familiar. The
15 general topic I'm familiar with obviously, but I don't
16 recall seeing this letter specifically. That does not
17 mean it is not in my file.

18 Q Did there ever come a time that you learned
19 that Mr. Hills had made an inquiry to Mr. Morris as
20 reflected in Exhibit 7 and the attached memorandum 7A
21 about the data rights issue? Did you ever learn that
22 such an inquiry had been made?

1 A During the life of the contract, I became
2 aware that several law firms of some stature or some
3 senior attorneys with connections were contacting high
4 DOJ officials, and this apparently is one of them.

5 you tell Hills means nothing to me as a name. For
6 example, Mr. Richardson would. That would be, to me, I
7 would recall much better what Richardson was doing, but
8 I would not recall if someone nor it wouldn't really
9 impress me much, either. Just another attorney and
10 another letter. May 1 or May 2 inquiry reflected in

11 Exhibit 7 Q My question is not so much who it is, but it's
12 a question did you ever learn that a request had been
13 made of Mr. Morris on behalf of INSLAW to do anything
14 regarding this data rights issue. it

15 probably A Sometime during the administration of this
16 contract, I received copies of letters concerning that
17 issue and obviously became aware. copies of any letters

18 that Q Do you recall becoming aware of this inquiry
19 before Mr. Morris responded to the inquiry which was in
20 August of '82? did you ever hear from any source that or

21 in A I cannot identify these events, put it in a
22 time frame, because usually I was not in that line of

1 communication. I was not, and I received copies
2 significantly after the fact, routed down through
3 various individuals. This is for your contract file.

4 Q Would I take it from that, then, that -- and
5 you tell me whether this is accurate or not -- if you
6 would take it from that, then, that you would have no
7 recollection of ever being consulted by anyone in
8 connection with the preparation of a response by Mr.
9 Morris or anyone working pursuant to his direction, a
10 response to the May 1 or May 2 inquiry reflected in
11 Exhibit 7 and 7A?

12 A To the best of my knowledge, no.

13 Q And that so far as you can recall, if you ever
14 did learn about the inquiry having been made, it
15 probably could have been even after the response was
16 actually issued?

17 A I did not receive the copies of any letters
18 that I did receive as action items. Usually they were
19 after the fact.

20 Q Now, did you ever hear from any source that or
21 in the course of responding to this or preparing a
22 response, I should say, to this inquiry that is

1 reflected in Exhibit 7A, 7 and 7A to Mr. Morris, that
2 Mr. Morris had requested that Mr. Brewer be excluded
3 from any role in preparing a response?

4 A No.

5 Q You've never heard that up until today?

6 A I may have heard it. Similarly, there are
7 letters in the file asking that I be removed from
8 administering the contract. I have heard roundabout. I
9 can't pin it down to a time frame or anything.

10 MR. COOPER: Listen to his question.

11 BY MR. KELLOGG: (Resuming)

12 Q Mr. Videnieks, I'm not asking you about
13 hearing about INSLAW asking to remove Mr. Brewer.
14 That's not my question.

15 My question is did you ever hear from any
16 source at any time that Mr. Morris had requested that
17 Mr. Brewer step aside and not have any role in preparing
18 a response for Mr. Morris to give to this inquiry that
19 was made --

20 A To the best of my knowledge, never.

21 Q Did you ever have any discussions about this
22 matter, this issue with Mr. McWhorter?

1 A I don't think so, no.

2 Q The reason I ask that is that there is
3 evidence from Mr. McWhorter that it was Mr. McWhorter
4 who was asked to take the lead role in preparing a
5 response, or take a lead role at least insofar as the
6 EOUSA was concerned, to the exclusion of Mr. Brewer, and
7 you don't recall any discussions with Mr. McWhorter
8 about that subject?

9 A No.

10 Q Now, do you recall ever having any discussions
11 with Mr. Brewer in which the subject of Mr. Morris'
12 response to the request as set forth in Exhibit 7 was
13 mentioned?

14 A Repeat that, please?

15 MR. COOPER: Can I make a suggestion, because
16 I think that the various depositions to which you have
17 referred will reflect that there were various responses
18 to those letters, intermediate letters, that might help
19 the witness, if you want to, to show him a copy of the
20 August 1982 letter, and that may help him know whether
21 he saw it.

22 (Pause.)

1 MR. KELLOGG: Would you mark this Exhibit 11?

2 (The document referred to
3 was marked Videnieks Exhibit
4 No. 11 for identification.)

5 BY MR. KELLOGG: (Resuming)

6 Q Would you take a look at Exhibit 11, Mr.
7 Videnieks. That is a draft of a letter which I will
8 tell you was sent to Mr. Hills in identical form as that
9 by date of August 11, 1982.

10 First of all, have you ever seen that before
11 or the subsequent letter based on that draft?

12 A Yes, I've seen -- I think I've seen this
13 letter.

14 Q All right. Now, when I refer in my question
15 to Mr. Morris' response to Mr. Hills, this is the
16 response that I'm talking about, the one that was made
17 based on this draft which is Exhibit 11.

18 My question is did you ever discuss Mr.
19 Morris' response as set forth there in Exhibit 11 with
20 Mr. Brewer?

21 A Ever?

22 Q Yes, ever.

1 A I may have, but I don't recall it.

2 discussing the fact or the subject of Mr. Morris'
3 response as set forth there in Exhibit 11 with Mr.
4 Brewer?

5 A We may have discussed it. I probably
6 discussed it with other people, too. But it was not my
7 action item.

8 I may have discussed it. The answer is, I may
9 have discussed it.

10 Q But I take it, if you did, you don't have any
11 specific recollection of having discussed it with Mr.
12 Brewer?

13 A Not a specific recollection.

14 Q Do you ever recall Mr. Brewer saying anything
15 to you about this Morris response in Exhibit 11?

16 A He may have. I don't specifically recall it.

17 Q Do you recall him expressing anything critical
18 or that response?

19 A I don't.

20 Q Do you recall anyone else who worked at EDUSA
21 at the time being critical of Mr. Morris' response as
22 set forth there in Exhibit 11?

1 Q Do you have any recollection of ever
2 discussing the fact or the subject of Mr. Morris'
3 response as set forth there in Exhibit 11 with Mr.
4 Brewer?

5 A We may have discussed it. I probably
6 discussed it with other people, too. But it was not my
7 action item.

8 I may have discussed it. The answer is, I may
9 have discussed it.

10 Q But I take it, if you did, you don't have any
11 specific recollection of having discussed it with Mr.
12 Brewer?

13 A Not a specific recollection.

14 Q Do you ever recall Mr. Brewer saying anything
15 to you about this Morris response in Exhibit 11?

16 A He may have. I don't specifically recall it.

17 Q Do you recall him expressing anything critical
18 of that response?

19 A I don't.

20 Q Do you recall anyone else who worked at EOUSA
21 at the time being critical of Mr. Morris' response as
22 set forth there in Exhibit 11?

1 A I don't recall that, no.

2 Q Do you ever recall Mr. McWhorter criticizing
3 that response?

4 A No, sir.

5 Q Now, let me just ask you this as a
6 hypothetical question.

7 If you had known during this period of time
8 between April and August of 1982 that Mr. Morris had
9 asked Mr. Brewer to step aside from any involvement in
10 preparing a response to this question that resulted in
11 Mr. Morris' August 11, '82 letter, would you have had
12 any concern, as a contracting officer, with Mr. Brewer's
13 continuing role as the program manager?

14 A No, sir.

15 MR. COOPER: Objection. You can answer.

16 THE WITNESS: No, sir.

17 BY MR. KELLOGG: (Resuming)

18 Q And why would you not have had any concern?

19 A The letter does not say that Mr. Brewer is
20 going to be reassigned. It is not related to the matter.

21 Q In other words, I guess that if Mr. Morris had
22 asked him to step aside for this particular part of it,

1 but not for the rest of the contract, it wouldn't be of
2 any further concern to you?

3 A I think as we previously discussed, at one
4 point the civil division was charged with writing a
5 letter.

6 Now another organization chose to write a
7 letter on that topic.

8 Q Well, the civil division was asked to prepare
9 the response, together with the executive office
10 people's input, response, for Mr. Morris to give; isn't
11 that right?

12 A Well, you tell me.

13 MR. COOPER: Objection; lack of foundation. I
14 think the witness has stated he wasn't involved. I
15 think that may explain in part the witness' answer.

16 Based on his testimony, he really wasn't
17 involved with this process.

18 BY MR. KELLOGG: (Resuming)

19 Q All right, now, do you recall, Mr. Videnieks
20 -- strike that.

21 I take it at some point in here in 1982 this
22 DC pilot contract between Inslaw -- with Inslaw, that

1 was terminated, was it not?

2 A No, sir.

3 MR. COOPER: Off the record.

4 (Discussion off the record.)

5 MR. KELLOGG: Back on the record

6 BY MR. KELLOGG: (Resuming)

7 Q Do you recall a contract between Inslaw and
8 the District of Columbia, U.S. Attorney's Office, being
9 terminated during this 1982 timeframe?

10 A I don't recall that, no.

11 Q Do you ever recall Mr. Brewer making a
12 statement in which he in effect took credit for having
13 that contract terminated?

14 A No, to the best of my knowledge, the D.C. U.S.
15 Attorney's Office does not or did not have procurement
16 authority.

17 So your question, the line of questioning is
18 very unclear.

19 Q Does that mean that if there was a contract
20 between Inslaw and the U.S. Attorney's Office -- strike
21 that.

22 If there was a contract for Inslaw to provide

1 services for the use of the D.C. U.S. Attorney's Office,
2 that contract would have been with the Department of
3 Justice; is that what you're saying?

4 A Yes, sir.

5 Q And my question is, assuming there was a
6 contract, do you recall which was terminated, do you
7 recall Mr. Brewer ever saying that he was the one who,
8 in effect, got that contract terminated?

9 A I don't recall any contract with Inslaw --
10 that doesn't mean that there weren't any -- that was
11 terminated for default or convenience other than the
12 PROMIS contract which I was administering.

13 Q Now, there came a time, I believe in the fall
14 of 1982, when Mr. Brewer made a request to the Justice
15 management division that you be assigned fulltime to the
16 executive office to assist in the oversight and
17 implementation and so on of this PROMIS Inslaw contract;
18 is that correct?

19 A I don't know.

20 Q Your testimony is that you don't know whether
21 Mr. Brewer ever asked to have you assigned fulltime to
22 the executive office of U.S. Attorneys to work on this

1 contract?

2 A I don't know that, nor have I ever been
3 assigned fulltime.

4 (A document was marked on to

5 Videnieks Exhibit No. 12 for

6 identification.) In which

7 BY MR. KELLOGG: (Resuming)

8 Q Take a look at what's been marked as Exhibit
9 12, please. It's two pieces of paper stapled together.

10 A Obviously, they made such a request. As a
11 matter of fact, I am always, throughout my six years at
12 the Department of Justice, supported other organizations
13 as well as EOUSA, with EOUSA the primary organization I
14 was supporting.

15 But the request obviously was made.

16 Q Now your testimony is that until I asked you
17 this question here today, you had no knowledge that Mr.
18 Brewer had in fact made the request?

19 A Now that I looked at it, the memo, either this
20 one or that one, looks familiar. But as a matter of
21 fact, I always worked on contracts from several
22 organizations.

1 Q All right, now in the second page of that
2 exhibit, the memorandum from Mr. Brewer to Mr. Tyson, in
3 which he asked Mr. Tyson to send the first page, which
4 is a memo apparently that he drafted, from Mr. Tyson to
5 Mr. Rooney, who was then the assistant attorney general
6 in charge of the Justice management division in which
7 you worked.

8 Mr. Brewer says in his memo that the executive
9 office had agreed to reimburse JMD in full for the cost
10 of your services.

11 Did you have knowledge that that had taken
12 place, or that a commitment like that had been made by
13 EOUSA?

14 A Yes, a common practice. Civil division
15 pursued a similar plan with another contracting officer,
16 and I understand, another organization of Justice, OJD,
17 did the same thing.

18 And I understand the antitrust division did
19 the same thing.

20 Q So that was a common practice, in your
21 understanding?

22 A And I think to some extent -- I am no longer

1 under such an agreement between organizations, but there
2 may be other individuals.

3 Q But it's your understanding that such a
4 practice was, at least at the time, a common practice
5 within the department?

6 A It was a practice. Let's say, I was not the
7 only one, throughout my six years with the Department of
8 Justice, I was not the only contracting officer under
9 such a plan.

10 Q Do you think it would be fair to describe that
11 practice as extraordinary?

12 A I wouldn't describe it as extraordinary. I
13 think it's a flexible approach to meet research needs.

14 Q Do you recall Mr. Brewer raising with you any
15 concerns prior to this time here, September of '82, that
16 your other duties were requiring that you spend -- that
17 your other duties were such that you weren't able to
18 spend sufficient time on the Inslaw contract?

19 A I recall from time to time that I would have
20 to tell Mike Snyder, the COTR, or Jack Rugh, or Brick,
21 that some actions would have to await so I could fulfill
22 other tasks which were higher on the priority list, but

1 not necessarily from EOUSA.

2 Q And other tasks, by that, you would mean other
3 tasks --

4 A Procurements for other DOJ organizations.

5 Q Not involving Inslaw?

6 A Not involving Inslaw, correct.

7 Q And do you recall any specific tasks that Mr.
8 Brewer wanted you to perform that you told him that they
9 would have to wait?

10 A Well, for EOUSA I was administering three
11 major contracts, two of them larger in dollar size than
12 the Inslaw contract.

13 That was a fairly time consuming task. In
14 addition to that, I had other non-EOUSA contracts to
15 take care of, and there came times when I imagine it may
16 have bothered Brick that I would do some other things.

17 Q But the reason that he is asking to you have
18 assigned here doesn't have anything to do with the other
19 EOUSA contracts that you were administering, but the
20 PROMIS contract, isn't that right?

21 A Maybe it says so. Maybe you could point out
22 to me where it says so.

1 Q Look on the second page of Exhibit 11.

2 A Which line?

3 Q Well, start right at the beginning. As you
4 are aware --

5 A Well, I will read it again.

6 (Pause.)

7 A The first sentence basically reinforces what I
8 just said, that we're not talking about one contract but
9 about three.

10 Q Going to the third paragraph, if you will,
11 starting where he says, these diversions, speaking about
12 your other duties, these diversions have adversely
13 affected our efforts at implementing PROMIS, because Mr.
14 Videnleks, through no fault of his own, has been
15 unavailable for consultation at crucial periods in the
16 computer procurement, the word processor procurement,
17 and in the administration of the Inslaw contract.

18 Q Now do the first two that he mentioned, the
19 computer procurement and the word processor procurement,
20 are they unrelated to the Inslaw contract?

21 A They are related. They are for the hardware,
22 which the government furnished to Inslaw for performance

1 of the PROMIS contract.

2 Q And then the last sentence says, in the latter
3 concern, that is, the administration of the Inslaw
4 contract, it is my opinion that the only way to maintain
5 our schedule within budget is to rigorously monitor
6 Inslaw's efforts.

7 Clearly in that last sentence he's referring is
8 specifically to the need to monitor Inslaw's activities
9 under the contract; isn't that right?

10 A Sure.

11 Q Now, did there come a time in the fall of 1982
12 when you learned that Inslaw had changed banks, and made
13 an additional borrowing from its then new bank?

14 A Fall or late fall, yes.

15 Q And how did you learn that, sir?

16 A I don't specifically recall, but I do remember
17 that I was shown the instrument by Murray Hannon in
18 EDUSA facilities, in that timeframe.

19 Q Is it your recollection that you became aware
20 of this because Mr. Hannon showed it to you, or did
21 someone else call it to your attention before that?

22 A There was a reason why Mr. Hannon came to our

1 office and showed it to us.

2 Q And that action means that somebody on the
3 government side --

4 A It may have been an auditor. It may have been
5 --

6 Q Well, it would perhaps refresh your
7 recollection to know that Mr. Whiteley, who I believe is
8 the auditor, testified that he discovered this during
9 this timeframe, during an audit, and that he made
10 mention of it to you, I don't know whether alone or
11 among others.

12 But does that ring any bells with you, sir?
13 Do you recall Mr. Whiteley mentioning that fact to you?

14 A I don't recall him mentioning it to me, but
15 that's probably how it happened.

16 Q When you learned of that fact, presumably from
17 Mr. Whiteley, or from whatever source, was that a cause
18 of concern to you, sir?

19 A Yes, it was.

20 Q And why was that?

21 A It was shortly after award of the contract,
22 and it was in violation of the advance payments

provision of the contract.

Q All right, and why did you feel it was a violation of the advance payments provision in the contract?

A It was specifically against one of the covenants in that particular contract article, and if we had it in front of us, we could probably identify it.

My letters to Inslaw, which I issued to them once notifying them of the possibility that advance payments may be discontinued, refers to the specific contract provision.

Q And before you issued any letter regarding this advance payments -- strike that.

Just so that I can understand, what do you mean when you use the term, advance payments, in reference to this contract?

MR. COOPER: I want to first make an objection, because that calls for a legal conclusion. Since the term, advance payments, as opposed to other types of payments under government contracts, is a term of art and has certain legal meanings and is subject to countless legal opinions with ample precedent as to the

1 distinction between advance payments and other types of
2 payments under government contracts.

3 But other than that, I'll let the witness
4 answer.

5 MR. KELLOGG: I just want to know what he
6 means by it.

7 THE WITNESS: Payments in advance of
8 occurrence of cost -- in advance of reimbursement for
9 incurrence of cost, established in accordance with a
10 specific schedule geared to the contractor's cash flow
11 needs.

12 BY MR. KELLOGG: (Resuming)

13 Q Well, I want to ask you to repeat that.

14 MR. COOPER: It sounds like one of those legal
15 opinion.

16 MR. KELLOGG: It sounds worse than a legal
17 opinion, which usually is bad enough.

18 BY MR. KELLOGG: (Resuming)

19 Q You say it's a payment?

20 A You see we have a cost reimbursement
21 contract. Normally, under that type of contract, the
22 contractor incurs costs or books them, and then submits

1 a voucher and gets reimbursed.

2 In this case, we went a step further and moved
3 up a month ahead of that time, advance the contract for
4 cash so that we could incur those costs.

5 Q So that I understand, you don't mean, do you,
6 that for example on the day the contract was signed,
7 before Inslaw did anything under this contract, that the
8 Department of Justice advanced any payment?

9 A I don't recall when the first check, or the
10 amount of it, when it was presented to Inslaw, and when
11 I checked off on it.

12 Q I ask you, sir, if it is a fact that as it's
13 used in this contract, this whole business of advanced
14 payments, that all that means is that the contractor
15 performs particular services, certifies in writing that
16 those particular services have been performed, and then,
17 acting on that, you as the contracting officer had
18 authority which you wouldn't otherwise have had, to
19 actually release funds to them for that work that they
20 had done, but to do it immediately or very promptly;
21 isn't that true?

22 A I don't understand your question, and I think

1 It's not true.

2 Q Well, let me try to make my question clearer.

3 MR. COOPER: Why don't you just ask him --

4 THE WITNESS: Why don't you split it up into
5 parts?

6 MR. COOPER: Ask him how it works.

7 BY MR. KELLOGG: (Resuming)

8 Q You tell me how, in your understanding, how
9 this advance payment arrangement under this contract
10 actually worked?

11 A How it worked?

12 Q Yes. What did the contractor Inslaw have to
13 do to get any advance payments?

14 A Physically, Inslaw would prepare a check, and
15 I forget now to who it was made out to, it must have
16 been to Inslaw, had an Inslaw official sign it -- and
17 this is the best of my recollection -- sign it, and then
18 come to me for a counter-signature, and then went for a
19 third signature, and got the money.

20 Q All right, but was there any document that had
21 to be provided to you as a basis for asking you to sign
22 a check?

1 A The contractor kept track of the advance
2 payments on his cost reimbursement vouchers, if I
3 recollect correctly.
4 Initially, before I would authorize the
5 advance payment, I would get confirmation from the audit
6 staff, either telephonic or in writing, before we
7 released that payment.

8 Q And you wanted to get confirmation of what,
9 sir?

10 A Confirmation to see whether the amounts of the
11 check bear a relationship to the cash flow needs of the
12 contractor.

13 Q And is it your testimony, sir, that the
14 amounts of the requested advance payments had not
15 relationship to any work that had actually been done at
16 that point in time?

17 A The cost reimbursement vouchers, when
18 substantiated by cost categories, what costs had been
19 incurred.

20 Q Well, that's my question. So when they
21 presented you with a request for a quote advance payment
22 --

1 A It was usually supported by information on a
2 voucher.

3 Q And the voucher at least said in writing,
4 Inslaw was saying in writing that it had incurred these
5 costs; isn't that right?

6 A Right.

7 Q Already incurred them; not that they were
8 going to?

9 A Incurred, or under a cost reimbursement
10 contract, one can voucher for incurred cost and costs
11 booked, so not in all cases were the costs incurred.

12 Q But it might be incurred in an accounting
13 sense, if they do it on an accrual --

14 A I'm not an accountant.

15 Q Well, neither am I. But one way or another,
16 before they got any money, they had to certify to you in
17 writing that these costs had either been actually
18 incurred, or had been booked; isn't that right?

19 A I think it's right. Particularly under the
20 prompt payment act, which was enacted around that
21 timeframe, the payment, the reimbursement of cost, took
22 30 days.

1 Q Yes, and this speeded that process up by 30
2 days, 20 days, or whatever?

3 A Correct. Generally, that's the way I
4 recollect.

5 Q But it did not represent actually paying the
6 contractor in advance of the contractor either incurring
7 the cost or booking the cost; isn't that right?

8 A I don't recall specifically. I would have to
9 see vouchers and compare the checks, the amounts of the
10 checks with the vouchers.

11 Q Well, I ask you sir if it isn't a fact that
12 this whole business of the advanced payments, that all
13 that meant is that the contract, Inslaw, got paid
14 exactly what they would have gotten paid without the
15 advance payment arrangement. It's just that they got
16 paid 30 days or less earlier.

17 A I would have to compare the cash flow to give
18 you an answer on that, and I'd probably need the
19 assistance of an auditor.

20 A Okay. So my answer is, I don't know whether
21 it looks like a neat note. My notes are not normally
22

1 MR. COOPER: Ask him what happened, not what
2 would be fair.

3 THE WITNESS: I'm getting a little confused.
4 Apparently, your line of questioning is not proper.
5 Okay, should I continue to answer?

6 MR. COOPER: No, no, no. Do you know if A
7 through D on these notes were topics of discussion that
8 occurred in a meeting at which certain people were
9 present? Do you know?

10 THE WITNESS: I don't recall. These could
11 have been phone conversations. This could be a
12 consolidated note of several events. It could be
13 anything.

14 BY MR. KELLOGG: (Resuming)

15 Q Let me go back to your point, so that you
16 understand the procedural rules.

17 Mr. Cooper is entitled to make on the record
18 whatever objections he wants to make. Under the rules,
19 you have to answer notwithstanding the objection unless
20 Mr. Cooper orders you not to answer.

21 A Okay. So my answer is, I don't know whether
22 -- It looks like a neat note. My notes are not normally

1 Q But conceptually, as you understand it, I am
2 correct, am I not, that under this advanced payment
3 arrangement INSLAW properly could not make a claim to
4 get payments until they could certify either that they
5 had actually incurred costs that would be reimbursible
6 under the contract or that they had booked such
7 reimbursible costs under the contract?

8 MR. COOPER: Objection. The question has been
9 asked and answered at least twice.

10 BY MR. KELLOGG: (Resuming)

11 Q That's correct, isn't it?

12 A The amount of advanced payments, advanced
13 payment schedule was linked to the cash flow requirement
14 of the contract.

15 Q Well, let me ask you this. It surely is the
16 case, isn't it, that INSLAW couldn't just come to you
17 under this contract and say, look, we need \$500,000. We
18 haven't done any work at all. We haven't booked any
19 costs. We haven't incurred any costs.

20 Now, if that was the case, they wouldn't get a
21 dime from you under an advanced payment, isn't that
22 right?

1 A If the advanced payment schedule set forth in
2 the contract had the level of advanced payments high
3 enough, they probably could have gotten it. That was
4 negotiated. That particular provision, the schedule of
5 payments and as it links to INSLAW's cash flow
6 requirements, was negotiated by Bob Whiteley.

7 Q Are you aware that Mr. Whiteley testified last
8 week that these advanced payments under this contract
9 were really just prompt government payments for work
10 that had already been performed?

11 A He may have testified to that.

12 Q If he did, you wouldn't have any reason to
13 dispute that testimony, would you?

14 MR. COOPER: Objection.

15 THE WITNESS: He's smarter than I am in that
16 area.

17 BY MR. KELLOGG: (Resuming)

18 Q In any event, there came a time -- strike that.
19 When this issue arose about the new bank,
20 borrowing from the Bank of Bethesda by INSLAW, do you
21 recall when you learned of this whether you were alone
22 or with anybody else, not including the person who was

1 giving you the information?

2 A I think I was in a conference room at EDUSA
3 when Murry Hannon walked in with a piece of paper.

4 Q But you indicated that you thought you must
5 have learned of the fact of the bank borrowing before
6 that, which is what prompted Mr. Hannon to bring that in?

7 A I don't recall what, when or how or what
8 precipitated Hannon's appearance.

9 Q Well, in any event, when you recall the event
10 when Mr. Hannon came into the EDUSA conference room with
11 this document in response to somebody's inquiry about
12 it, who else was present besides yourself and Mr. Hannon?

13 A I think Brewer may have been there and/or Mike
14 Snyder.

15 Q Do you recall Mr. Brewer making any statements
16 or taking any position as to what, if anything, should
17 be done as a result of this?

18 A No, I don't.

19 Q Would you deny that he took the position that
20 you should send -- strike that.

21 Q Do you recall either Mr. Brewer or Mr. Rugh or
22 anyone there in the Executive Office taking the position

1 giving you the information?

2 A I think I was in a conference room at EOUSA
3 when Murry Hannon walked in with a piece of paper.

4 Q But you indicated that you thought you must
5 have learned of the fact of the bank borrowing before
6 that, which is what prompted Mr. Hannon to bring that in?

7 A I don't recall what, when or how or what
8 precipitated Hannon's appearance.

9 Q Well, in any event, when you recall the event
10 when Mr. Hannon came into the EOUSA conference room with
11 this document in response to somebody's inquiry about
12 it, who else was present besides yourself and Mr. Hannon?

13 A I think Brewer may have been there and/or Mike
14 Snyder.

15 Q Do you recall Mr. Brewer making any statements
16 or taking any position as to what, if anything, should
17 be done as a result of this?

18 A No, I don't.

19 Q Would you deny that he took the position that
20 you should send -- strike that.

21 Do you recall either Mr. Brewer or Mr. Rugh or
22 anyone there in the Executive Office taking the position

1 that because of this advanced payment that you had just
2 learned of -- I'm sorry, I misspoke.

3 EOUSA. Because of the new bank borrowing that you had
4 just learned of that you should ask INSLAW to turn over
5 its source codes to its software?

6 A I don't specifically recall that, but I recall
7 several events occurring at the same time, generally
8 speaking.

9 Q What were those events?

10 A The notification that INSLAW had violated the
11 advanced payments provision of the contract.

12 At the same time, generally around the same
13 time, either as a result of at the evaluation of
14 INSLAW's statement as to what the impact of advanced
15 payments discontinuation might be, the audit staff
16 informed us either in writing or telephonically that
17 INSLAW may be in financial difficulties, and I think in
18 that relationship the EOUSA became concerned about work
19 in process which was in EOUSA hands.

20 Q All right, so that to your recollection it was
21 as a consequence of these events that you've testified
22 about, it was EOUSA that expressed a concern about

1 getting ahold of the INSLAW software source code?

2 A I think that that request originated with the
3 EOUSA.

4 Q As a matter of fact, it originated with Mr.
5 Rugh at EOUSA, isn't that right?

6 A I don't know.

7 Q Would it be fair to say that he certainly
8 wasn't opposed to that?

9 A Oh, sure. He was probably advised by his
10 subordinates. I mean, the sequence of who became
11 concerned first I cannot speculate on.

12 Q Do you ever recall Mr. Brewer expressing to
13 you or in your presence a concern about the need to get
14 ahold of the INSLAW software source code in this context?

15 A I don't specifically recall, but I'm sure that
16 I did express concern, as I'm sure others did.

17 Q As a result of that, what is your
18 recollection? What request was made first, the request
19 or the notice that you were going to shut off the
20 advanced payments or the request to turn over the source
21 code materials, which of those?

22 A I don't know. I can't recall the sequence of

1 events, but I can recall they are all related.

2 Q You indicated that the initial concern that
3 you had when you learned about the additional INSLAW
4 bank borrowing was that you felt that that was a
5 violation of the specific covenant in the contract
6 regarding the advanced payments; is that correct?

7 A Yes.

8 Q What, in your understanding, was the reason
9 why bank borrowing would be something that would be a
10 matter of concern with respect to the advanced payments
11 system or procedure?

12 A I don't understand the question. The
13 contractor violated a provision of the contract, and I
14 gave him a notification that he violated it.

15 Q My question doesn't go to whether or not it's
16 a violation of the contract. I'm just asking, as the
17 contract officer, what did you understand the reason for
18 not permitting additional bank borrowing without
19 notification to the government? What did you understand
20 the reason for that was?

21 A Why they didn't notify us?

22 Q No. Why did you understand, what was the

1 reason that the government needed to be notified? In
2 other words, why was this put in the contract, in your
3 understanding, if you know?

4 A The smarter minds than me wrote the
5 procurement regulations and proscribed the language to
6 be used.

7 Q So as far as you know, that's in all contracts?

8 A That is fairly standard language.

9 Q Well, I ask you, sir, if the fact of the
10 matter isn't that the reason for that is the presumption
11 that additional borrowing would generate a greater
12 financial risk to the company and a greater risk that
13 the company would go under?

14 A That could be a concern, yes.

15 Q But I guess, if Mr. Whiteley is correct that
16 these advanced payments in the context of this case
17 really does mean payment for work already done but
18 prompt payment, whereas if it was included in his
19 payment arrangement it would be payment in 30 days or 60
20 days or whatever the norm would be, I guess it's fair to
21 say that additional borrowing wouldn't increase any risk
22 regarding the advanced payments if the payments were for

1 work that had already been done anyway; is that right?

2 MR. COOPER: Object to your question because
3 of lack of foundation. You haven't established what
4 anyone has said. Your question is extremely
5 speculative. You've asked a question of the witness,
6 and the witness said this was a legal requirement, and
7 that's why it was put in the contract.

8 I just think it's a grossly unfair question
9 which really borders on legal argument. I just object
10 strenuously to the way in which you phrased that
11 question.

12 BY MR. KELLOGG: (Resuming)

13 Q Can you answer the question?

14 A I forgot it. Please repeat it.

15 Q I think I'll save it.

16 MR. KELLOGG: Mark that as 13.

17 (The document referred to
18 was marked Videnieks Exhibit
19 No. 13 for identification.)

20 BY MR. KELLOGG: (Resuming)

21 Q Mr. Videnieks, Exhibit 13, is that a copy,
22 excluding the handwritten highlighting that's put on

1 there, but apart from that, is that a copy of a letter
2 that you sent to Mr. Gizzarelli at INSLAW by date of
3 December 6, 1982?

4 A Yes.

5 Q In that letter, you are asking essentially for
6 copies of all of the source code materials for the
7 software used under the contract?

8 A Yes, there are seven items itemized on here.

9 Q But that includes what is colloquially
10 referred to as the source code for the software?

11 A I don't see source code referred to in here
12 unless I'm not seeing it.

13 Q I don't think the term is in there, but isn't
14 that what people refer to as source code?

15 A I don't know whether these seven items are
16 source code.

17 Q The computer programs themselves, the
18 underlying algorithms and all of that business?

19 A I'm requesting computer programs and
20 documentation.

21 Q Now, do you recall getting any response to
22 that in December 1982?

1 A I specifically don't recall a response. It
2 does not mean I may not have received it. advised as a

3 MR. KELLOGG: Mark this as 14. violation of
4 (The document referred to
5 was marked Videnieks Exhibit
6 No. 14 for identification.)

7 BY MR. KELLOGG: (Resuming) and thus everybody

8 Q Now, I show you what's been marked as Exhibit
9 14, a letter dated January of '83 which appears to
10 enclose additional copy, if you will, of the Exhibit 13
11 letter of yours to Mr. Gizzarelli which apparently got
12 lost in the mail somewhere. several months later, as I

13 Does that refresh your memory? the fall of

14 A Yes. borrowing was made, say, six months

15 Q You recall it? spoke.

16 A I recall this letter, yes. fall of '82, and

17 Q Now, sir, go back to Exhibit 13 a minute.
18 Now, you testified that the audit staff had indicated
19 that because of the bank borrowing, the additional bank
20 borrowing and that because of the possibility of
21 shutting off the advanced payments that the audit staff
22 was concerned that this would adversely impact INSLAW's

1 financial condition. Is that correct?

2 A I guess I testified that we were advised as a
3 result of events precipitated by INSLAW's violation of
4 the advanced payments provision of the contract that the
5 audit staff became involved and notified both the
6 contracting officer and the program office that INSLAW
7 was in precarious financial condition and thus everybody
8 concerned took steps to insure that our interests are
9 protected.

10 Q So I understand what you're saying here,
11 INSLAW makes an additional bank borrowing which you
12 don't find out about until several months later, as I
13 understand it. You find out about it in the fall of
14 '83, and the bank borrowing was made, say, six months
15 before. I'm sorry, I misspoke.

16 You find out about it in the fall of '82, and
17 the bank borrowing, the extra bank borrowing, had been
18 made in the spring of '82 shortly after the commencement
19 of the contract. Is that right?

20 A I think that's right.

21 Q When you learned about that, in your view
22 that's a violation of the advanced payments provision of

1 the contract; correct?
2 A Yes.
3 Q Because the contractor is not supposed to make
4 any additional bank borrowings without advising you and
5 notifying you of it at the time. Isn't that right?

6 A Yes.

7 Q All right, but I guess my question is this:
8 Was the audit staff's concern that INSLAW's financial
9 condition already was bad because they had borrowed or,
10 on the other hand, was it that their financial condition
11 would be bad if you withdrew the advanced payments?

12 A I think the audit staff concluded that
13 INSLAW's financial condition is bad.

14 Q Well, after the contract went forward
15 beginning in March of '82, how frequently would you or
16 anybody from Justice get any financial statements of
17 INSLAW?

18 A Mostly unless they were late. Their
19 requirements were monthly financial management
20 statements, but the contractor sometimes was late, and
21 later on the contractor completely discontinued.

22 Q During this first six months of the contract,

1 Q All right. Now, when you found out about it,
2 the borrowing had already been made six months before,
3 correct?

4 A The line of credit had been established at
5 \$1.2 million. I don't know how much money actually had
6 been borrowed.

7 Q All right, but I guess my question is this.
8 Was the audit staff's concern that INSLAW's financial
9 condition already was bad because they had borrowed or,
10 on the other hand, was it that their financial condition
11 would be bad if you withdrew the advanced payments?

12 A I think the audit staff concluded that
13 INSLAW's financial condition is bad.

14 Q Well, after the contract went forward
15 beginning in March of '82, how frequently would you or
16 anybody from Justice get any financial statements of
17 INSLAW?

18 A Mostly unless they were late. Their
19 requirements were monthly financial management
20 statements, but the contractor sometimes was late, and
21 later on the contractor completely discontinued.

22 Q During this first six months of the contract,

1 did you get the monthly financial statements or not?

2 A Let's see the file so I can examine the file.

3 Q Well, I'm asking you for your recollection.

4 A I don't recall whether I did or did not
5 receive them without examining the file to refresh my
6 memory.

7 Q If you didn't receive them, do you recall --

8 A I would have issued a letter to them that I
9 had not received them.

10 Q Do you recall issuing any such letter?

11 A I recall issuing one such letter.

12 Q During the first six month of the contract?

13 A I don't recall that.

14 Q Was there anything in the financial reports
15 that you did receive during the first six months that
16 reflected anything about the bad financial condition of
17 INSLAW?

18 A The format of those financial management
19 reports was not in the form of a financial statement of
20 the company. The financial report is geared towards the
21 performance of that specific contract. It was a
22 contract specific financial report.

1 Q So this is not a financial statement of the
2 company?

3 A No.

4 Q Were there any requirements under the contract
5 that INSLAW submit financial reports of the company
6 itself periodically?

7 A No. I'm positive, no. As a part of the
8 proposal, they submitted a financial statement, and also
9 they submitted a cash flow requirement statement to
10 substantiate their claim for the advanced payments
11 included in the advanced payments provision of the
12 contract.

13 Q In any event, in the fall of '82 when you say
14 the audit staff indicated that they thought that the
15 INSLAW financial condition was bad, who in the audit
16 staff advised you of that?

17 A I think it was -- it was Bob Whiteley.

18 Q What, if anything, did he recommend that you
19 do about that?

20 A I don't specifically recall, but I do recall
21 that it was, I believe it was a written -- it was a
22 memorandum, and --

1 Q So this is not a financial statement of the
2 company?

3 A No.

4 Q Were there any requirements under the contract
5 that INSLAW submit financial reports of the company
6 itself periodically?

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8 proposal, they submitted a financial statement, and also
9 they submitted a cash flow requirement statement to
10 substantiate their claim for the advanced payments
11 included in the advanced payments provision of the
12 contract.

13 Q In any event, in the fall of '82 when you say
14 the audit staff indicated that they thought that the
15 INSLAW financial condition was bad, who in the audit
16 staff advised you of that?

17 A I think it was -- it was Bob Whiteley.

18 Q What, if anything, did he recommend that you
19 do about that?

20 A I don't specifically recall, but I do recall
21 that it was, I believe it was a written -- it was a
22 memorandum, and --

1 Q Do you recall whether he recommended that the
2 advanced payments be terminated?

3 A No, he did not recommend that.

4 Q Do you recall whether he recommended that the
5 government should take steps to get the source code and
6 the software?

7 A No, that was not a Bob Whiteley
8 recommendation. The recommendation to safeguard the
9 government's interest in this contract was made in part
10 upon Murray Hannon's statement that if advanced payments
11 were discontinued that he would not be able to meet his
12 December payroll.

13 So that, to us, indicated that, further
14 indicated that there must be some problems there and
15 that we should take action to protect our interests.

16 Q So it was Mr. Hannon who indicated that if you
17 shut off the advanced payments they could not make the
18 payroll?

19 A And I would say that Mr. Whiteley corroborated
20 that or also independently informed me.

21 Q That if the advanced payments were shut off
22 the company would have a heck of a time continuing to

1 operate, in effect?

2 A Yes. But that indicated a generally
3 precarious financial condition.

4 Q But presumably when INSLAW went into this
5 contract it was precarious enough that they had to ask
6 for advanced payments. Isn't that right?

7 A No, I would not have been able to sign a
8 contract without making a determination of
9 responsibility, a written determination as the
10 contracting officer. It basically states that the
11 contractor is technically and financially capable to
12 perform the work.

13 At that time, INSLAW had been performing on
14 these pilot contracts. In any event, the government,
15 meaning me, with the assistance of the audit staff made
16 the determination that INSLAW can perform the contract.

17 Q I recognize you already had to make a
18 determination that they could perform or you wouldn't
19 have executed the contract; but on the other hand,
20 INSLAW had to demonstrate to you up front going in that
21 they needed advanced payments or you wouldn't have given
22 it to them; is that right?

1 A And that they would not borrow additional
2 money so I could get it approved by the Assistant
3 Attorney General without misstating facts.

4 Q Now, going back to the letter, your letter of
5 December 6th, I believe it's Exhibit 13, did you prepare
6 that letter yourself, sir?

7 A I think that I did not formulate the center of
8 it, for sure. I did not write the language of the seven
9 points for sure. I may have written the beginning and
10 the end.

11 Q So that the substance of the letter --

12 A The technical description of the software and
13 documentation which we were requesting was put together
14 by the technical experts.

15 Q That came from the Executive Office of the
16 U.S. Attorneys, didn't it?

17 A Correct.

18 Q Do you know whether Mr. Brewer had any input
19 in the drafting of that letter, the draft that came to
20 you?

21 A He may have, but I would guess that it was
22 primarily Jack Rugh and Mike Snyder. Brewer may have

1 participated, but normally on this type of letter it
2 would be Rugh and/or Snyder.

3 Q But normally it would have been reviewed by
4 Mr. Brewer before it was sent over to you, wouldn't it?

5 MR. COOPER: Objection. Lack of foundation.
6 You haven't established that this witness would know
7 what documents Mr. Brewer reviewed and which ones he
8 didn't since he didn't work in Mr. Brewer's office.

9 BY MR. KELLOGG: (Resuming)

10 Q You can answer.

11 A I cannot say in which office I was when this
12 letter was put together or in which office I signed it,
13 and I cannot speculate as to whether Brewer did or did
14 not review it.

15 Q Do you recall any discussions with Mr. Brewer
16 about the language in this document?

17 A We must have at one point or another. He
18 became involved because of this letter. In other words,
19 this letter was undated. Apparently it was dated but
20 lost, and then Brewer had to send this transmittal over
21 again, and obviously he was familiar with this.

22 Q Yes.

1 In any event, at some point do you recall
 2 getting any response to this December 6th letter which
 3 eventually got to INSLAW sometime in early January?

4 A I recall getting a response, but I would like
 5 to see it to refresh my memory as to what it said.

6 Q Do you recall who you got the response from?

7 A No.

8 (Whereupon, at 5:22 p.m., the taking of the
 9 instant deposition ceased.)

10

11

 Signature of the Witness

12

13 SUBSCRIBED AND SWORN TO before me this ----- day

14 of -----, 19-----.

15

16

 NOTARY PUBLIC

17

18 My commission expires: -----.

19

20

21

22

CERTIFICATE OF REPORTER

SUSAN A. HARRIS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by ME; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Susan A. Harris

NOTARY PUBLIC

My Commission expires: 3-14-91

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

UNITED STATES BANKRUPTCY COURT

DISTRICT OF COLUMBIA

----- x

INSLAW, INC., :

Debtor, :

Case No. 85-00070

INSLAW, INC., :

Plaintiff, :

Adv. Proc. No. 86-0069

v. :

UNITED STATES OF AMERICA, :

Thursday, June 18, 1987

and UNITED STATES DEPARTMENT :

Washington, D.C.

OF JUSTICE, :

Defendants. of :

----- x

DEPOSITION OF PETER VIDENIEKS(cont'd)

Washington, D. C.

June 18, 1987

AR
ALDERSON REPORTING

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

----- x
In Re: INSLAW, INC., :
 :
 Debtor, :
 :
 and : 850070
 :
 INSLAW, INC., : ADVERSARY PROCEEDING
 : No. 86-0069
 Plaintiff, :
 :
 -vs- :
 :
 UNITED STATES OF AMERICA and :
 the DEPARTMENT OF JUSTICE :
 :
 Defendants. :
----- x

Thursday, June 18, 1987

Washington, D.C.

Continued deposition of

PETER VIDENIEKS,

a witness in the above-entitled cause, was called for
examination by counsel for the Debtor/Plaintiff, pursuant to
notice, at the offices of McDermott, Will & Emery, before
Craig L. Knowles, CSR, a Notary Public in and for the
District of Columbia, commencing at 10:08 a.m., when were
present on behalf of the respective parties:

A P P E A R A N C E S:

Kellogg, Williams & Lyons, by

PHILIP L. KELLOGG, ESQ.

JAMES L. LYONS, ESQ.

1275 K Street, Northwest

Washington, D.C. 20005

On behalf of the Debtor/Plaintiff.

United States Department of Justice, by

SANDRA P. SPOONER, ESQ.

Deputy Director

Commercial Litigation Branch

550 11th Street, Northwest

Room 1230

Washington, D.C. 20530

On behalf of the Defendants.

Also Present:

Mr. Hamilton.

* * *

1	<u>C_O_N_T_E_N_T_S</u>	
2	<u>WITNESS</u>	<u>EXAMINATION BY COUNSEL FOR</u>
3	<u>DEBTOR/PLAINTIFF</u>	
4	Peter Videnieks	
5	By Mr. Kellogg	196
6	<u>E_X_H_I_B_I_T_S</u>	
7	<u>Videnieks Ex. No.</u>	<u>Identified</u>
8	No. 15	196
9	No. 16	198
10	No. 17	214
11	No. 18	215
12	No. 19	216
13	No. 20	222
14	No. 21	223
15	No. 22	248
16	No. 22, 23A-D	255
17	No. 24	257
18	No. 25	258
19	No. 26	264
20	No. 27	270
21	No. 28	273
22	No. 29	279

E_X_H_I_B_I_T_S(cont'd)

1		
2	<u>VIDENIEKS_Ex._No</u>	<u>IDENTIFIED</u>
3	No. 30	281
4	No. 31	284
5	No. 32	294
6	No. 33	296
7	No. 34	299
8	No. 35	315
9	No. 36	331
10	No. 37	337
11	No. 38	351
12	No. 39	363
13	No. 40	368
14		
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22		

P R O C E E D I N G S

Whereupon, BY MR. KELLOGG:

Q. Mr. Videnieks, PETER VIDENIEKS, at what is marked as
was called for examination by counsel for Debtor/Plaintiff,
and having been first duly sworn by the notary public, was
examined and testified upon his oath as follows:

EXAMINATION BY COUNSEL FOR DEBTOR/PLAINTIFF

BY MR. KELLOGG:

Q. Mr. Videnieks, this is a continuation of your
deposition that we commenced yesterday and you are still
under oath, sir.

A. When we finished yesterday, we were
chronologically up to January 6 of 1983, when, as indicated
on Exhibit 14, Mr. Brewer sent a copy of your December 6,
1982 letter to Mr. Gizzarelli, or to INSLAW, requesting the
software documentation and so forth under article 30 of the
contract.

Q. You recall that testimony?

A. I recall that, yes.

MR. KELLOGG: I guess the next thing I want to
do to do is mark this as 15.

(Deposition Exhibit 15 was marked for

1 identification.).

2 BY MR. KELLOGG:

3 Q. Mr. Videnieks, take a look at what is marked as
4 15, please. This appears to be a copy of a letter addressed
5 to you, dated February 2, '83, from James Dimm, the acting
6 project director at INSLAW, responding to your December 6,
7 '82, request for the software documentation; is that
8 correct?

9 A. Yes, sir.

10 Q. To your recollection was that the first written
11 response you got to that request?

12 A. I don't recall any other requests at this
13 point, this very moment. It may have been.

14 Q. You don't remember any other responses?

15 A. I remember an exchange of correspondence
16 regarding this question. Whether this is the first
17 correspondence from INSLAW, I can't remember.

18 Q. Do you recall getting any oral response prior
19 to this time?

20 A. There may have been discussions. There may
21 have been discussions, I don't recall anything specific.

22 MR. KELLOGG: Mark this next one as Exhibit 16,

1 please.

2 (Deposition Exhibit 16 was marked for
3 identification.)

4 BY MR. KELLOGG:

5 Q. Mr. Videnieks, take a look at what is marked as
6 Exhibit 16.

7 (Witness examines document.)

8 A. I will read it.

9 BY MR. KELLOGG:

10 Q. Just read it to yourself.

11 (Pause.)

12 A. I have read it.

13 BY MR. KELLOGG:

14 Q. This obviously is an internal INSLAW memorandum
15 to the files.

16 Q. I assume you have never seen this before, have
17 you, sir?

18 A. No, sir.

19 Q. The subject of the memorandum is a meeting at
20 the Justice Department, which the memo indicates you
21 attended, together with others, on February 4, 1983.

22 Do you recall attending the meeting that is

1 described in the memorandum? of advance payments. Second,

2 A. I recall another one better. I don't think of
3 this is the same meeting, unless all the participants are
4 not listed here. I don't see a name from Arthur Young here,
5 which may have been omitted. fourth point there, too?

6 MR. KELLOGG: Off the record a second.

7 (Off-the-record discussion.)

8 BY MR. KELLOGG: assertion that you showed

9 Q. You have indicated that you have a recollection
10 of a meeting that was attended by the people listed here,
11 but also by someone from Arthur Young, who is not listed in
12 the memo, is that it? tion of it and I am not trying to get

13 A. It may have been a separate meeting. I
14 recall -- I don't recall this specific meeting. At this
15 time, I don't recall it. that were discussed at the

16 Q. But you don't have any reason to dispute, as
17 you sit here today, that you did attend such a meeting as
18 this, do you? and in general terms, those were the three

19 A. I have no reason to dispute it, no. at the

20 Q. In general terms, the memo indicates that
21 basically there were three issues that were addressed at
22 this meeting. Do you have a recollection after you sent out

1 One was the issue of advance payments. Second,
2 the issue of bank borrowing. And the third, the question of
3 data rights and your request to get the software that I have
4 described earlier in your December 6 letter.

5 A. Wasn't there a fourth point there, too?

6 Q. Perhaps there was. That's all I --

7 A. Last point.

8 Q. You mean their assertion that you showed
9 hostility?

10 A. Yes, I think it was a point.

11 Q. It's a point of the memo, but obviously, that
12 is their characterization of it and I am not trying to get
13 into that at this point.

14 I was simply trying to summarize what the memo
15 indicated the points were that were discussed at the
16 meeting.

17 A. I understand.

18 Q. And in general terms, those were the three
19 broad issues that appear to have been discussed at the
20 meeting, according to the memo; isn't that right?

21 A. Yes, sir.

22 Q. Do you have a recollection after you sent out

1 your December 6, 1982, letter requesting the source code and
2 the underlying data processing materials, do you have a
3 recollection of attending a meeting like this with these
4 various people who are identified here being present at
5 which these questions were discussed?

6 A. It appears I attended a meeting like this. I
7 don't dispute the fact that I may have attended that
8 meeting. I don't recall it specifically, as I stated
9 before.

10 Q. I understand you didn't recall, you don't
11 recall this particular date. But my question to you is, do
12 you have any recollection of ever attending a meeting like
13 this at which these issues were discussed involving these
14 people, whether it was on this date or some other date?

15 A. Like I stated before, another meeting jumps in
16 my memory much more clearly than this one, which as I said
17 before, I don't remember specifically. I am not denying it
18 took place.

19 Q. All right. When you say another meeting, are
20 you pretty clear in your mind that it was on some other time
21 besides February 4 of '83?

22 A. I cannot remember that far back as to specific

1. dates.

2. Q. Tell me what you remember about the meeting
3. that you testified that you do recall more clearly.

4. A. That meeting was in the Andretta room in the
5. Department of Justice. It was chaired by Bill Snider, the
6. administrative counsel, and also one of the attendees was
7. from the firm Arthur Young. I don't see those individuals
8. listed here.

9. That meeting, I think, was rather tense. Bill
10. Hamilton was there, and that stands out in my memory. This
11. one does not.

12. Q. At least Mr. Hamilton's recollection of that
13. meeting, the Andretta room meeting was that it took place
14. some time in May of '83. And I believe his recollection is
15. that that dealt primarily with the computer center cost
16. issue.

17. A. That is not my recollection. I cannot -- I
18. don't think I have any notes with dates on it, but I seem to
19. remember taking a vacation in the month of February, or
20. early spring, going down to South Carolina, after the
21. meeting I am referring to.

22. Q. All right. Well, tell me what your

1 recollection was of that meeting. The one you are talking
2 about took place in the Andretta room in the department, it
3 was chaired by Bill Snider?

4 A. Bill Snider, Kamal Rahal was there, I was
5 there, Hamilton, the man from Arthur Young, Harvey may have
6 been there.

7 Q. Mr. Sherzer?

8 A. Right, that is about all I remember with
9 respect to the attendees. The discussions I think centered
10 around -- could have been the same issue as presented in the
11 memo that you have here as Exhibit 16.

12 Q. Your recollection, such as it is, is that this
13 meeting would have been somewhere in early spring, earlier
14 than May?

15 A. That is my recollection, because I remember
16 coming back from that vacation, there was a huge snow storm
17 that hit Washington and I had to shovel the parking spot for
18 my car.

19 Q. In any event, would it be fair to say that
20 these three questions that I described, that is, the advance
21 payment issue, the bank borrowing, INSLAW bank borrowing,
22 and the software, your request to get the software data,

1 those three issues were all inter-related, is that a fair
2 statement?

3 A. A fair statement would be that INSLAW's
4 financial condition, bad financial condition as assessed and
5 communicated to me by the audit staff and the data request,
6 are related.

7 And it was made to protect the government's
8 interests in the event INSLAW's financial condition
9 worsened.

10 Q. I am not sure that is any different from what I
11 asked, but to be precise, I understood you to testify
12 yesterday that when you first learned in the fall of '82
13 that INSLAW had made a new line of credit without notifying
14 you under the contract, as they were required to do, that
15 you felt that that was a violation of the advance payment
16 clause?

17 A. Yes, sir.

18 Q. Isn't that right?

19 A. Yes, sir.

20 Q. And that you at least considered at that point
21 giving a notice to INSLAW that they were in violation of the
22 contract and that there is a possibility that you might

1 withhold or stop making the advance payments?

2 A. I gave them a letter of that nature.

3 Q. All right. So that certainly, the bank
4 borrowing or the new line of credit and the advance payments
5 issue, those two were certainly related to each other,
6 weren't they?

7 A. The advance payments article in the contract
8 prohibits unauthorized new liabilities to be incurred by the
9 contractor.

10 What you are saying basically is, you are
11 bringing out a subpoint from the provision in the contract.

12 Q. I am just asking you, aren't there two, aren't
13 the two related.

14 A. I answered you.

15 Q. And they are.

16 A. I answered you.

17 Q. The answer is they are related.

18 MS. SPOONER: The question has been asked and
19 answered.

20 MR. KELLOGG: I disagree with you. I am going
21 to ask it again, because I don't think it was answered. I
22 think it's a very simple thing.

1 I don't think it involves any concession on
2 your part, either.

3 BY MR. KELLOGG:

4 Q. The contract mandates that the contractor,
5 INSLAW, advise you of any new bank borrowings or any change
6 in their credit situation; isn't that right?

7 A. Obtain my approval.

8 Q. Notify you and obtain your approval. And when
9 you found out that they had gotten a new line of credit
10 without notifying you and getting your approval, that in
11 turn was a violation of the advance payments clause; isn't
12 that right, or it entitled you, if you wanted to --

13 A. It was a violation of one of the covenants
14 within that article.

15 Q. And as a consequence of such a violation, you
16 had the right to stop the advance payments; isn't that
17 right?

18 A. Right, and I did not do that.

19 Q. I understand that.

20 A. No.

21 Q. But you wrote them a letter saying you were
22 considering doing that?

A. Yes, sir.

Q. So that the two issues, that is, the fact of the new bank borrowing, triggered that letter about the possibility of eliminating the advance payments; isn't that right?

A. Right.

Q. All right so the two are related.

A. Because in order for me to put this unusual provision in a cost reimbursement contract, I had to get the approval from the assistant attorney general for administration to include that language in the contract.

Q. Yes, I understand.

A. In order to get that approval I had to make certain statements and sign my name as to the fact that the contractor has no other source of money, that he is unable to borrow money.

Q. I understand.

A. Which appears was not the case.

Q. I understand. Now, the request for the software source codes and so on that was contained in your December 6, '82, letter, that request was also triggered because of a concern over what people in the executive

1 office and yourself thought was a deteriorating financial
2 condition of INSLAW at the time; isn't that right?

3 A. The memorandum from the audit staff, prepared
4 by Bob Whiteley, I think, basically stated to my best
5 recollection that INSLAW's condition is bad, aside from the
6 advance payments issue. That they are in a bad financial
7 condition.

8 Q. But the fact that they had gone out and gotten
9 an additional credit line and maybe borrowed on it since the
10 contract started --

11 A. That may have triggered my contacting Whiteley
12 or it may have triggered the auditors looking into INSLAW.
13 However, it's their task to do that, anyway, on a continuous
14 basis as a cognizant audit activity.

15 So I am not sure as to what triggered
16 Whiteley's taking a closer look at INSLAW. It could have
17 been my request.

18 Q. In any event, you did call that to Whiteley's
19 attention and ask him --

20 A. I may have, I specifically don't remember it,
21 but I don't deny that I may have.

22 Q. At this February 4, 1983 meeting, it's Mr.

Hamilton's best recollection, of course, he could be wrong on the date, but his best recollection is that at that meeting during the discussion of the data rights question, that Mr. Hamilton said to Mr. Snider, look --

A. Bill or Mike?

Q. Bill Snider. Mr. Hamilton's recollection is that he said to Mr. Bill Snider, look, we just want to be able to protect our proprietary rights. We will give the government the rights to our privately funded even answerments, just as long as you can give us a modification to the contract or an agreement that protects our right to be able to own it and sell it freely to others.

Q. And that Mr. Snider responded to that by saying, Bill, that's not the way the government does business. If we want your privately funded enhancements, we will pay you for it.

A. My question to you is, do you have any recollection of such a conversation in your presence, either at this February 4, 1983, meeting, or any other?

A. Between Snider and Hamilton?

Q. Yes, sir.

A. I don't have a specific recollection. I don't

deny it took place.

Q. It may have taken place?

A. It may have taken place.

Q. Do you mean by that it could have taken place in a meeting that you attended?

A. In my presence, in my presence.

Q. All right. Is that inconsistent with the positions that Mr. Snider was taking, that you do remember during that period of time on this issue?

A. I cannot right now, on the spot, analyze Bill Snider's various positions on the question at this point. I don't remember whether he changed his position at all.

Q. Do you ever remember him taking a position similar to rewhat is reflected in that statement I just set forth, namely, look, if we want your privately funded enhancements, we will pay you for them?

A. I don't know what bill Snider said, like I said, I don't remember. He may have said it in my presence, but he's not the contracting officer. He may have had a conversation at the end of the table, he may have had it right in front of me. Modification 12 controls.

Q. I understand, of course, it does and I am not

1 disputing that. I am just asking you, I presume in the
2 course of all of this that you at some point had some
3 conversations with Mr. Snider, Mr. William Snider, about
4 this data rights issue; isn't that right?

5 A. Yes.

6 Q. In those conversations, or in others that you
7 were present when he made statements --

8 A. You are not talking about this specific meeting
9 now?

0 Q. Yes, not this specific meeting.

1 A. Okay.

2 Q. But any others. Did Mr. Snider ever make a
3 statement in your presence like this one that I am talking
4 about, namely, taking a position, well, look, if we want the
5 privately funded enhancements, we will pay for them?

6 MS. SPOONER: I am going to object on the
7 ground that that is protected by the attorney-client
8 privilege and instruct the witness not to answer.

9 MR. KELLOGG: All right.

0 BY MR. KELLOGG:

1 Q. Do you ever recall him making such a statement
2 or a statement similar to that in any meeting that you

attended with him, Mr. William Snider, in the presence of anybody from INSLAW?

A. I don't specifically recall that.

Q. Mr. William Snider, in his deposition testimony, has testified that a time or two that he counseled you regarding your abrasiveness in dealing with the contractor. Is that true?

MS. SPOONER: Objection. The question is confusing.

Are you asking this witness if Mr. Snider testified to that, or if Mr. Snider did in fact counsel him?

BY MR. KELLOGG:

Q. My question is, he testified to it and my question is, is it true?

MS. SPOONER: Is what true?

MR. KELLOGG: I take it back, the objection is well founded.

BY MR. KELLOGG:

Q. Is it true, Mr. Videnieks, that Mr. William Snider, at some point during these lengthy disputes with INSLAW, that Mr. Snider counseled you about your abrasive attitude towards the INSLAW people?

A. I don't recollect that. Snider was not in a line of command with respect to me. I did not report to him. That's basically it.

Q. I understand he wasn't in the chain of command above you. My question is, let me put it to you this way. You have no recollection of Mr. Snider ever telling you in words or substance that he felt that you were being a little abrasive in dealing with these issues and with the INSLAW people?

A. I -- no, I do recall, though, that Mr. Snider said basically to the effect, "Be careful with your correspondence with INSLAW and coordinate it with my office."

Q. What did you think he meant by being careful with your correspondence?

A. I imagine -- well, I would have to speculate what he meant.

Q. He was talking to you. What do you think he meant?

A. Things by that time may have gotten involved to legalistic, in the sense wherein involvement of an attorney in Snider's opinion was becoming important.

(Pause.)

MR. KELLOGG: Mark this as Exhibit 17, please.

(Deposition Exhibit 17 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 17, please. That appears to be a copy of a letter to you from Harvey Sherzer, dated February 10, 1983, in which he addresses some questions that came up in the February 4, 1983 meeting.

A. Yes. You notice this name on the last page, John Hozik. He is a partner from Arthur Young. That is the individual I was referring to earlier.

And his name does appear in this internal INSLAW memo talking about February 4. So it may be -- I may be remembering the same meeting.

Q. It may be that the meeting you were thinking of was on February 4, if this Arthur Young fellow was present.

A. Instead of May.

Q. Yes, I understand. In any event, I take it you received the original of this Exhibit 17, sir?

A. Yes, sir.

Q. There is all kind of correspondence going back

1 and forth here, but let me just ask you, on April 11, 1983,
2 I believe it is, you and INSLAW, Mr. Hamilton, executed
3 modification number 12 to the contract which addressed this
4 data rights issue; is that correct?

5 A. That's correct.

6 Q. And that that modification was essentially an
7 attempt by the parties, the government and INSLAW, to try to
8 resolve your concern for getting the software data and their
9 concern about the data rights in the privately funded
10 enhancements; is that correct?

11 A. Yes, sir.

12 MR. KELLOGG: I am going to skip several
13 documents here and go to a document, a letter of yours of
14 March 8, 1983, if you would mark that as Exhibit 18.

15 (Deposition Exhibit 18 was marked for
16 identification.)

17 BY MR. KELLOGG:

18 Q. If you will take a look at that, it's a letter
19 from you to Mr. Sherzer, or to his firm, dated March 8 of
20 '83.

21 (Witness examines document.)

22 A. Okay, I glanced at it.

not that is a BY MR. KELLOGG:

Q. Is that a copy of an original letter that you sent to Mr. Sherzer?

A. Yes.

Q. On March 8, 1983?

A. Yes.

Q. I take it that this is a response to the earlier letter of Mr. Sherzer's that was marked as Exhibit 17, together with some additional --

A. That's not the case.

Q. No?

A. It appears to be response to a March 3 letter. This is dated February 10.

Q. MR. KELLOGG: I take it back.

Mark this, please, as Exhibit 19.

(Deposition Exhibit 19 was marked for identification.)

MS. SPOONER: Are you talking about now Mr. Sherzer's letter of March 3?

MR. KELLOGG: Yes.

BY MR. KELLOGG:

Q. If you will look at 19 and tell me whether or

1 not that is a copy of the letter from Mr. Sherzer to you,
2 dated March 3, the original of which you received.

3 (Witness examines document.)

4 A. I have read it.

5 BY MR. KELLOGG:

6 Q. I take it that Exhibit 19 is a copy of the
7 letter that you received, a copy of the letter that you
8 received from Mr. Sherzer?

9 A. Yes, sir.

10 Q. What we had marked as Exhibit 18, your letter
11 to Mr. Sherzer of March 8, 1983, that is your reply to this
12 Exhibit 19, is that right?

13 A. Right.

14 Q. Turn to the second page of that letter, Exhibit
15 18, your letter, the paragraph starting "Finally, I
16 understand that you told Mr. Snider on March 4 that
17 government representatives were aware of the enhancements to
18 the data bases," and you go on to indicate that the first
19 time this was raised was at the, well, that nothing was said
20 by INSLAW representatives to challenge the statement by
21 government representatives that the first time this issue
22 was raised was at the February 4 meeting.

1 After you wrote this letter up until today, did
2 you ever come into any knowledge that INSLAW had raised the
3 fact of privately funded enhancements to the PROMIS software
4 before February 4 of '83?

5 A. I can't remember that far back with respect to
6 dates.

7 Q. I call your attention to your testimony
8 yesterday in which I examined you about the, I examined you
9 yesterday about the exchange of correspondence between
10 yourself and Mr. Merrill, in late '81 and early '82, before
11 the contract was even negotiated, in which questions --

12 A. They should have been more clear then, and my
13 mind is oriented towards contract administration, not
14 towards events preceding contract award.

15 Frequently, you use long introductions that I
16 seem to be missing at this point.

17 Q. I guess my point is this. After looking at
18 what we marked yesterday as Exhibits 2 and 3, 2 being your
19 letter to INSLAW asking for responses to the questions set
20 forth in the attached memo, and 3 being INSLAW's responses
21 to those questions, do you now realize that INSLAW had
22 raised this issue before the contract began?

1 A. Yes. Technically, being technically correct,
2 during the clarification process in the competitive mode
3 prior to contract award we asked INSLAW to clarify several
4 areas by memorandum, by letter. One of those points is the
5 one we discussed yesterday.

6 Q. They did mention in that clarification that
7 there were privately funded enhancements in the PROMIS
8 software; isn't that right?

9 A. At that point that was their position.

10 Q. So that it would be incorrect, would it not, to
11 say, as you said in your March 8, 1983, letter, Exhibit 18,
12 that the first time INSLAW ever raised this matter was at
13 the February 4, 1983, meeting?

14 MS. SPOONER: Objection, that is not what the
15 letter says.

16 BY MR. KELLOGG:

17 Q. Well, technically I guess you may be right.
18 But the letter says nothing was said by INSLAW
19 representatives in this regard at the February 4 meeting in
20 response to the statement by government representatives that
21 this was the first time this issue was raised.

22 I guess counsel is technically correct that

1 it's not the statement in the letter, Exhibit 18, that this
2 was the first time it was raised.

3 BY MR. KELLOGG:

4 Q. But somebody from the government asserted at
5 the February 4 meeting that that was the first time INSLAW
6 had ever raised the privately funded enhancements issue;
7 isn't that right?

8 A. I don't know what somebody did.

9 Q. Well, you said in your letter of March 8, 1983,
10 you made a reference to the fact that someone, some
11 government representative made a statement at the February 4
12 meeting that that was the first time INSLAW had raised the
13 issue; didn't you say that?

14 A. Do you want me to read the sentence to you?

15 Q. No, I can read the sentence.

16 A. I don't understand your question. It's very
17 vague, very difficult to understand.

18 Q. Well, I think you understand it very well.

19 A. No, I don't.

20 MS. SPOONER: Would you like to repeat it, Mr.
21 Kellogg?

22 MR. KELLOGG: Yes, I will, one more time.

BY MR. KELLOGG:

Q. In your letter of March 8, 1983, Exhibit 18, you recite the fact, or you recite the assertion that nothing was said by INSLAW representatives about privately funded enhancements at the February 4, 1983, meeting in response to the statement by government representatives that this was the first time the issue was raised.

A. Under the contract.

Q. All right. Did you, you intended, then, when you wrote this letter to add that caveat, that it was the first time it had been raised under the contract?

A. I am administering the contract, the RFP is dead. We are talking about the contract.

Q. So you didn't mean to say that nobody had ever raised it at any time, just they hadn't raised it during the contract before February 4?

A. Right.

Q. Is that correct?

A. Right.

MR. KELLOGG: If you will mark that as Exhibit

20. I am skipping a few, here. It's March 18, Mr.

Videnieks to Mr. Sherzer.

1 (Deposition Exhibit 20 was marked for
2 identification.)

3 BY MR. KELLOGG:

4 Q. Going back one second, Mr. Videnieks, to the
5 March 8, '83 letter, Exhibit 18, your letter to Mr. Sherzer
6 of March 8.

7 A. All right.

8 Q. Did you draft this letter, sir?

9 A. I participated in drafting this letter with
10 bill Snider. Bill Snider had a significant input in this
11 letter.

12 Q. All right. Did anybody else have any
13 significant input in drafting it?

14 A. Not to my recollection. That does not mean
15 that they may not have had.

16 Q. Turning to Exhibit 20, this appears to be a
17 copy of a letter from you to Mr. Sherzer, dated March 18.
18 Excuse me. I believe it's dated March 18, 1983. It appears
19 to have an erroneous received stamp from the law firm up at
20 the top indicating '82.

21 MS. SPOONER: I don't see that on my copy. I
22 wonder if I have the right document.

1 MR. KELLOGG: That one. was your response.

2 MS. SPOONER: I thought you had said it was a
3 document dated March 8.

4 MR. KELLOGG: No, 18. I am sorry, if I said 8.
5 I am moving now, there is a March 8, which is Exhibit 18.

6 BY MR. KELLOGG: March 18, 1983.

7 Q. Do you have Exhibit 20 there, Mr. Videnieks?

8 A. Yes, sir, but I don't have the letter to which
9 it refers, unless I have misplaced it, the March 9 letter
10 that this letter seems to be responding to. of your response

11 MR. KELLOGG: All right, I will put that in,
12 and I am sorry. sir.

13 Q. Let's mark this one as Exhibit 21. March 18,

14 1983? (Deposition Exhibit 21 was marked for

15 A. Right. identification.)

16 Q. MS. SPOONER: This is a letter from Mr. Sherzer
17 dated March 9, 1983? that the purpose of the letter is

18 MR. KELLOGG: Yes, that's correct. to correct

19 MS. SPOONER: Thank you. his March 9 alternative to the second

20 BY MR. KELLOGG: agreement out consideration? is that correct?

21 Q. If you will look at 21, that appears to be a
22 copy of a letter dated March 9, 1983, from Mr. Sherzer to

1 you and which, I believe, Exhibit 20 was your response.

2 A. That appears to be the case.

3 Q. All right.

4 A. I read the summary.

5 Q. All right. Turn, if you will, to Exhibit 20,
6 which is your response, dated March 18, 1983.

7 (Witness examines document.)

8 A. All right.

9 BY MR. KELLOGG:

10 Q. I take it Exhibit 20 is a copy of your response
11 to Mr. Sherzer's March 9, 1983, letter?

12 A. Yes, sir.

13 Q. Your letter, Exhibit 20, was dated March 18,
14 1983?

15 A. Right.

16 Q. Mr. Videnieks, you indicate in the first
17 paragraph of this letter that the purpose of the letter is
18 to correct certain statements that Mr. Sherzer had made in
19 his March 9 letter and to offer an alternative to the escrow
20 agreement currently under consideration; is that correct?

21 A. That's what the introduction seems to say, yes.

22 Q. Prior to this time, am I correct to believe

1 that there had been under consideration the possibility of
2 working out an escrow agreement between the government and
3 INSLAW which essentially would have provided that an
4 original set of the data, the software data, would be placed
5 in escrow with a bank so that if anything happened to
6 INSLAW, it went bankrupt or went out of business or
7 whatever, the government would be able to get at the
8 software and protect itself in sum and substance; such a
9 thing was under consideration prior to this letter, wasn't
10 it?

11 A. I think generally you are correct. In order to
12 completely agree with you I would have to scan that
13 agreement.

14 Q. I am not trying to --

15 A. I can't recall now exactly what was in that
16 escrow agreement. I did not participate in the drafting of
17 it.

18 Q. All right. I am not trying to recite in detail
19 what the agreement provided.

20 A. No.

21 Q. But essentially it was some kind of an escrow
22 agreement involving the software data and source codes and

1 so forth, correct?

2 A. I think so.

3 Q. All right. And this letter here, Exhibit 20,
4 you, among other things, are offering an alternative.
5 Instead of the escrow agreement, another alternative to try
6 to resolve the issue; is that correct?

7 A. Right. It was my position as contracting
8 officer not to have extraneous documents floating around. I
9 wanted all matters to be included, all points -- I wanted
10 the contract, itself, to cover all issues under it and have
11 no extraneous documents floating around.

12 Q. In your letter you talk about an seek to
13 correct from your perspective various things that Mr.
14 Sherzer has said in his letter of March 9. And --

15 MR. KELLOGG: Strike that.

16 BY MR. KELLOGG:

17 Q. Who drafted this March 18, 1983, letter that is
18 Exhibit 20?

19 A. I believe it was Bill Snider.

20 Q. In its entirety?

21 A. I think so.

22 Q. All right.

1 number A. I don't specifically recall, but it appears, I
2 mean, to the best of my knowledge, yes.

3 propose Q. In any event, you don't have any recollection
4 of having any substantial input into the drafting of this
5 letter?

6 A. Let me look at it again.

7 A. Either on the telephone or (Pause.)

8 A. I think Bill Snider drafted this.

9 BY MR. KELLOGG:

10 appropriate Q. Before you sent that out, do you recall having
11 any discussions about the letter?

12 A. I don't specifically recall any discussions.
13 That does not mean they were not any.

14 Q. Are you talking about with Mr. Snider?

15 A. With Mr. Snider.

16 Q. Before this letter was drafted do you recall
17 any discussions that you participated in with Mr. Brewer and
18 Mr. Rugh about making this offer that is contained in this
19 letter?

20 A. Yes, I do recall such discussions. In general,
21 I think we all participated to some extent in the drafting
22 of language which eventually ended up as being modification

Start
here

1 number 12. BY MR. KELLOGG:

2 Q. I did not participate in drafting the escrow,
3 proposed escrow agreement. There was all -- those
4 individuals who you enumerated did communicate about the
5 subject. About whether to make that offer?

6 Q. In your presence? to make that offer.

7 A. Either on the telephone or in person. this --

8 Q. All right. What, if any, discussions do you
9 remember having with Mr. Brewer about whether it would be
10 appropriate to make the offer that is contained in your
11 March 18 letter, Exhibit 20? all a specific conversation

12 A. Which specific paragraph are you referring to
13 as the offer? I would like to look at it. conversation on that

14 Q. Sure. It's the part beginning, it would be the
15 next to the last paragraph on page 2 that starts with the
16 words "In lieu of the proposed escrow agreement which the
17 department currently has under review, the government don't
18 offers..." in my memory that well.

19 A. Let me read it. answer, then, is you don't

20 recall Q. That language to the end of the letter.

21 A. Not that (Witness examines document.) discussing

22 A. Okay, I read it. elements and INSURANCE's claim to

1 BY MR. KELLOGG:

2 Q. Do you recall any conversations that you had
3 with Mr. Brewer about whether to make this offer that is
4 reflected in that part of your March 18 letter?

5 A. About whether to make that offer?

6 Q. Yes, about whether to make that offer.

7 A. I don't specifically recall talking to this --
8 to any individual specifically. I think during that time
9 there was a continuous discussion on the phone or in person
10 as a group or individually.

11 One, I don't recall a specific conversation
12 with Brewer on that subject. And that's basically it.

13 Q. Do you recall a specific conversation on that
14 same subject with Mr. Rugh?

15 A. I recall discussing the language which -- see,
16 my attention is focused on the -- what ended up as being
17 modification number 12. These preliminary documents don't
18 stand out in my memory that well.

19 Q. All right, your answer, then, is you don't
20 recall discussing this offer with Mr. Rugh?

21 A. Not that specific offer. I recall discussing
22 the whole issue of data requirements and INSLAW's claim to

1 data rights.

2 Q. Tell me what you do recall about your
3 discussions with Mr. Rugh about the data rights issue.

4 A. As distinguished from data requirements.

5 Q. Yes.

6 A. Nothing specific. In general, I think the
7 discussion could have dealt with INSLAW's claim with respect
8 to proprietary rights and then requesting -- maybe that came
9 later, requesting INSLAW to substantiate that claim.

10 Q. This would be after the execution of mod 12,
11 submitting identification of the claimed privately funded
12 enhancements and a method for showing that to you?

13 A. Right.

14 Q. And so on?

15 A. Yes, basically what I remember discussing with
16 Rugh would be methodology --

17 Q. In all likelihood that would have come after --

18 A. Yes, basically that would have come after this.

19 Q. Do you recall any discussions with Mr. Brewer
20 about this discussion of data rights and how to resolve it
21 and what could be done about it and so on?

22 A. In general, I remember individual and group

1 discussions with all concerned individuals about that topic,
2 yes.

3 Q. What, if anything, do you remember Mr. Brewer
4 saying on this subject?

5 A. Nothing specific.

6 Q. Do you have any recollection, just generally,
7 of what the thrust was of the discussions?

8 A. Was there any consensus as to how to deal with
9 the question in those discussions?

10 A. I think probably, as my notes indicate,
11 discussions dealt with requesting INSLAW to provide proof of
12 their claim that there are indeed proprietary enhancements,
13 what form that proof should take.

14 Related to that were discussions about INSLAW's
15 bad financial condition, in general, apart from the advance
16 payments issue, all related things.

17 Q. Do you recall Mr. Brewer ever taking the
18 position that INSLAW should be able to document or should be
19 asked to document these claims that they make of privately
20 funded enhancements?

21 A. Yes, and I think INSLAW offered to do that, if
22 I remember correctly.

1 discussions with all concerned individuals about that topic,
2 yes.

3 Q. What, if anything, do you remember Mr. Brewer
4 saying on this subject?

5 A. Nothing specific.

6 Q. Do you have any recollection, just generally,
7 of what the thrust was of the discussions?

8 Was there any consensus as to how to deal with
9 the question in those discussions?

10 A. I think probably, as my notes indicate,
11 discussions dealt with requesting INSLAW to provide proof of
12 their claim that there are indeed proprietary enhancements,
13 what form that proof should take.

14 Related to that were discussions about INSLAW's
15 bad financial condition, in general, apart from the advance
16 payments issue, all related things.

17 Q. Do you recall Mr. Brewer ever taking the
18 position that INSLAW should be able to document or should be
19 asked to document these claims that they make of privately
20 funded enhancements?

21 A. Yes, and I think INSLAW offered to do that, if
22 I remember correctly.

1 Q. All right. Going back to Exhibit 20, your
2 letter of March 18 and the part of it that relates to the
3 government's offer.

4 This offer --

5 MR. KELLOGG: Strike that.

6 BY MR. KELLOGG:

7 Q. Was this offer ever accepted by INSLAW?

8 A. Are we still back on the escrow agreement?

9 Q. No, sir, we are back on Exhibit 20, your letter
10 of March 18. When I say this offer, I am talking about the
11 language starting, "In lieu of the proposed escrow
12 agreement, the government offers ..."

13 (Witness examines document.)

14 A. I think modification number 12 contains similar
15 language.

16 Q. In fact, I mean modification number 12, signed
17 by both yourself and Mr. Hamilton, reflects INSLAW's
18 acceptance of the offer made in this March 18 letter; isn't
19 that right?

20 A. The letter is extraneous, I don't think it is
21 referred to in the contract modification. The contract
22 modification stands by itself.

1 The parties agreed only to those things which
2 are spelled out in the modification. Extraneous letters, if
3 they are not referred to in the modification, are not part
4 of the modification.

5 Q. But the fact of the matter is that --

6 A. This is a document prelim flare and apart of
7 negotiations preceding to that modification 12 document.
8 That is all I have to say on that, can say at this point.

9 Q. Well, let me ask you this. You say that you
10 believe modification 12 contains similar language.

11 Would you dispute that it was on the basis of
12 this offer contained in your March 18 letter that I have
13 described earlier that you and INSLAW executed the mod 12
14 agreement?

15 A. Of course.

16 Q. All right.

17 A. No, let me finish, sir. Of course, this is
18 only one document, and there were numerous phone
19 conversations, conversations in person which formed the
20 basis of modification 12. This is one document which is in
21 the background.

22 Q. One of several?

1 A. One of several.

2 Q. All right. Now, going up to the top of page 2
3 of Exhibit 20, where you say, "Therefore, the data rights
4 clauses of several different contracts between INSLAW and
5 the government govern the rights of the parties. In order
6 to determine whether the government has any rights in any
7 private enhancements, it is necessary to know precisely what
8 the private enhancements are and the requirements of the
9 contract."

10 Is it your understanding that what you --

11 MR. KELLOGG: Strike that.

12 BY MR. KELLOGG:

13 Q. Is it fair to read that to mean, I will put it
14 this way. Is it fair to read that language to mean that if
15 INSLAW could demonstrate that its software contained some
16 privately funded enhancements, that is, not funded by any
17 government contract, and if those enhancements were not
18 necessary to fulfill the requirements of this contract, then
19 they would, well, then that the government would not have
20 any rights in those enhancements?

21 MS. SPOONER: May I have that question repeated
22 please?

1 (The reporter read as directed.)

2 MS. SPOONER: Thank you.

3 BY MR. KELLOGG:

4 Q. I know it's a complicated question.

5 A. It is a complicated question. The answer is, I
6 don't necessarily agree with you, to the extent that those
7 enhancements were incorporated to such an extent into the
8 required -- item required under the contract removal of
9 those enhancements would be disruptive.

10 Q. All right.

11 A. In other words, the contractor cannot
12 incorporate subunits into an item and, thus, at a later time
13 we are to the point where the government has, to construct
14 its programs, to achieve its mission.

15 Q. Again, is it fair from what you are saying to
16 conclude that if INSLAW could demonstrate that its software
17 contained privately funded enhancements which were not
18 required to do the tasks called for by this contract, and if
19 they could be taken out without disrupting the government's
20 activities under the contract, then INSLAW would have the
21 right, and not the government, to those enhancements; is
22 that fair to say?

1 MS. SPOONER: May I have that question reread,
2 please?

3 (The reporter read as directed.)

4 MS. SPOONER: I am going to object to that
5 question on the ground that it calls for a legal conclusion,
6 and Mr. Videnieks is not a lawyer.

7 If you are asking for his opinion as a
8 contracting officer in this case, then I have no objection.

9 MR. KELLOGG: Clearly, I am asking the latter,
10 as you say, his opinion as the contracting officer. And I
11 recognize he is not a lawyer.

12 A. Sure, and also the questions do sound a bit
13 hypothetical and generally --

14 BY MR. KELLOGG:

15 Q. Just for the record I am asking it to get
16 clear --

17 A. What do you mean by right?

18 MS. SPOONER: Mr. Kellogg, may I just say
19 something?

20 Government contracting is, as I am sure you
21 know, a very precise art and science, and Mr. Videnieks has
22 been trained to deal in those very sort of precise and, some

1 people say, picky details.

2 I believe that some of your questions are very
3 vague. I have not objected to them because I believe that
4 Mr. Videnieks is entitled and is quite capable of doing his
5 very best to answer those questions.

6 But I think it's only fair that you accept the
7 fact that he is going to ask you to clarify your questions,
8 because they are very imprecise.

9 MR. KELLOGG: I will try to clarify them to
10 whatever extent is necessary so that Mr. Videnieks has an
11 understanding.

12 It's not my purpose to try to trap him into
13 anything. He wrote the letter, or he sent it out under his
14 name; and it bears on the issues.

15 And I am simply trying to find out what, in his
16 mind, the logical consequences, if you will, were from what
17 he has said in here.

18 BY MR. KELLOGG:

19 Q. I guess in response to my last question you are
20 saying what do I mean by the right?

21 A. The word right, yes, in both versions of your
22 question.

1 Q. All right. What I mean by it is in the
2 hypothet that I gave you in my last question, in that case
3 do I understand you to mean that INSLAW would have the right
4 to the privately funded enhancements in that case, and that
5 the government would not have any right to use it if INSLAW
6 asked them to give it back to them?

7 A. That we would not have any rights to use them?

8 Q. Yes.

9 A. I would have -- you are asking for my opinion.

10 Q. Yes.

11 A. I would like to research that point. I am not
12 sure that that is true. I would have to think about it for
13 some time, give you a good answer on that.

14 Q. Would you have any reason to dispute, again, in
15 that hypothet, that INSLAW would own those privately funded
16 enhancements?

17 MS. SPOONER: Would you repeat again, Mr.
18 Kellogg, the hypothetical?

19 MR. KELLOGG: Yes. Simply put, as simply as I
20 can, the hypothetical is, if INSLAW could identify
21 enhancements to its software which it had provided under
22 this contract, which enhancements were privately funded and

1 which enhancements were not necessary to do any of the tasks
2 that are required to be done under the contract, and which
3 enhancements could be taken out without disrupting the
4 government's conduct of its affairs under the contract, in
5 that case, in that hypothetical, in your view wouldn't
6 INSLAW own those enhancements, those privately funded
7 enhancements?

8 A. I am not sure they would. I am not a lawyer on
9 the subject. You are basically saying there were
10 voluntarily deliberous items beyond what is required by the
11 contract. Is it a gift? I don't know.

12 BY MR. KELLOGG:

13 Q. All right.

14 A. I am not a lawyer. We should do legal research
15 to decide what category that situation falls into.

16 Q. You have answered my question.

17 Now, turning to the offer you made in the later
18 part of the letter, and here again, my purpose is simply to
19 make sure that I understand at least what your meaning or
20 what you thought your meaning was in writing this letter.
21 Why don't you just tell me as you sit there, what is your
22 lay person's understanding of the offer as it was made?

1 What was the government offering to do?

2 A. You are referring again to the second, to the
3 page 2, next to last paragraph?

4 Q. Yes, sir. Let me say by way of introduction to
5 that or predicate to that, I know the written language of
6 the letter governs and I am not trying to get you to change
7 it.

8 A. Not of the letter.

9 Q. Pardon?

10 A. The modification governs.

11 Q. The written letter is the final word as to what
12 the written letter says.

13 A. Yes, sir.

14 Q. That is all I mean. I am not trying to get you
15 to change that.

16 A. Fine.

17 Q. I am just asking you, as you sit there today,
18 you tell me what you recall as to what is the gist of the
19 offer that you were making there.

20 A. The government agrees it will not disseminate
21 or disclose PROMIS software requested in our letter of
22 December 6 beyond the EOUSA headquarters office and the 94

1 U.S. attorneys offices. And this offer was made upon the
2 condition that we receive -- that INSLAW satisfies our
3 request under the data requirements clause to our
4 satisfaction.

5 Q. Well, the offer talks about a resolution of the
6 data rights issue. What was your intention there as to how
7 the data rights issue would be resolved in terms of this
8 offer?

9 A. INSLAW's delivery of the data requested under
10 article 30, I believe it was, data requirements, in a form
11 acceptable to the government.

12 Q. Yes, but if I understand both the letter and
13 what you are saying correctly, there are two parts to the
14 offer.

15 The first thing you want is, you want INSLAW to
16 give you all of the software data --

17 A. That is what we want. That was the primary
18 concern.

19 Q. For the government, sure.

20 A. Sure.

21 Q. You wanted to get that delivered to you. And
22 if they did that in order to resolve this issue, you are

1 saying in effect that you will agree not to disseminate that
2 data that they do give you under article 30?

3 A. Yes, sir.

4 Q. Other than to the executive office and the 94
5 U.S. attorneys offices?

6 A. Yes, sir.

7 Q. Until this data rights issue is resolved?

8 A. Correct.

9 Q. All right. Then you go beyond that to describe
10 how, in terms of your offer, you propose to try to resolve
11 the data rights issue; isn't that right?

12 A. Let me look at the letter.

13 (Pause.)

14 A. I also state that this does not change the
15 rights under the contract of either party.

16 Q. You have made that clear.

17 A. That we would discuss the matter further with INSLAW. (Pause.)

18 A. I have looked at the next to last paragraph of
19 the letter. Did you mean by that that you would negotiate

20 BY MR. KELLOGG: you wanted to keep any of those

21 Q. There again, tell me the gist of your
22 understanding of what you were proposing as to a manner to

1 resolve the data rights issue after you get the article 30
2 data requirements delivered to you and you have agreed not
3 to disseminate it until this data rights issue is resolved,
4 what is the gist of this proposal as far as how to resolve
5 the data rights issue?

6 A. Basically, INSLAW would deliver, meet the
7 requirement under article 30 and deliver the data. And
8 assuming it was in a format acceptable to the government,
9 and assuming that the government agreed that, indeed, there
10 were proprietary enhancements incorporated in that data,
11 then -- which were not necessary for the contract
12 performance, then the government would discuss the matter
13 further with INSLAW.

14 Q. All right. What did you mean or what was in
15 your mind when you say then they would discuss the matter
16 further if --

17 A. That we would discuss the matter further with
18 INSLAW.

19 Q. Did you mean by that that you would negotiate
20 over some form of payment if you wanted to keep any of those
21 things that were in there but not required for performance
22 of the contract?

1 A. Or payment by INSLAW to us.

2 Q. Pardon?

3 A. Or payment by INSLAW to us for the costs of --
4 any costs associated with removal of that data.

5 Q. I am limiting my question here to --

6 A. The discussions, basically, the letter says we
7 will talk. If indeed any proprietary enhancements were
8 identified and agreed to, indeed, there were proprietary, by
9 the government, in that data submitted by INSLAW, then we
10 would talk further.

11 Q. Doesn't your offer also say there that the
12 government would then either destroy or return the enhanced
13 versions --

14 A. I guess on the next page it does say that. It
15 does say that on the next page.

16 Q. What is it the government would have destroyed
17 or returned?

18 A. What this letter, I think, says is that if
19 enhancements which INSLAW claims are proprietary and the
20 government agrees are proprietary are identified, then the
21 government would discuss with INSLAW whether these
22 enhancements are necessary for contract performance or not,

1 they would discuss the matter of disposal of the matter,
2 disposal of these enhancements. What we are really talking
3 about is disposal.

4 Q. So that I understand you clearly, when you got
5 the language in here, the language which says, " Following
6 resolution of the data rights issue, the government will
7 review the effect of any enhancements which are determined
8 to be proprietary and then either direct INSLAW to delete
9 those enhancements from the versions of PROMIS to be
10 delivered under the contract, or negotiate with INSLAW
11 regarding the inclusion of those enhancements in that
12 software."

13 Now, my question relates to that phrase
14 beginning "Negotiate with INSLAW regarding the inclusion of
15 those enhancements in that software."

16 What did you mean in your mind by that phrase
17 "Negotiate with INSLAW regarding the inclusion of those
18 enhancements in that software"?

19 A. Discuss the matter with INSLAW with respect of
20 their, INSLAW's, having included enhancements which INSLAW
21 claims are proprietary into the software delivered to us.

22 Q. Now, so that I understand, are you saying that

1 in your mind when this offer was made and use of that term
2 "Negotiate with INSLAW", that you did not envision any
3 possibility that there would be any set of circumstances
4 under which the government would pay any money to INSLAW
5 following negotiations to include any of these privately
6 funded enhancements, if there were any?

7 A. Like I said, it could have been a situation
8 where INSLAW would have to pay us. This is an offer to
9 discuss the matter further.

10 Q. I recognize that it is.

11 A. I don't know what I envisioned back then. I
12 don't think I did envision payment to INSLAW.

13 Q. But apparently you did envision that INSLAW
14 might have to pay the government something, is that right?

15 A. I mention that as a hypothetical possibility,
16 the same way as you brought out a hypothetical.

17 Q. Well, so are you saying that either one would
18 be an equally possible hypothetical in your mind?

19 A. I don't know if it's equal or not. We are
20 really philosophizing back and forth here. I wish counsel
21 would rule on that. I am not an expert on data rights.

22 Q. All right. Are you aware that Mr. Tyson

1 testified in his deposition here recently that his
2 understanding on this issue was that the government was
3 prepared, if there were privately funded enhancements
4 demonstrated to their satisfaction, not necessary for the
5 contract, that the government was prepared to pay INSLAW for
6 them?

7 MS. SPOONER: Is your question, Mr. Kellogg,
8 whether this witness is aware of Mr. Tyson's testimony?

9 MR. KELLOGG: Yes.

10 A. I am not aware of Mr. Tyson's testimony. But
11 the government cannot buy something or pay for something it
12 does not need.

13 BY MR. KELLOGG:

14 Q. So does -- it is.

15 A. So he is wrong if he said that.

16 Q. If he did testify that way --

17 A. If there is no need, it's against the law to
18 buy it.

19 Q. So you would be surprised --

20 A. That he would have said that.

21 Q. If he would have said that?

22 A. Or -- I don't think any government official

1 would buy things that they don't need. I think implicit in
2 your statement was that the software was unnecessary.

3 I am going to get a cup of coffee.

4 MR. KELLOGG: Sure.

5 (Recess.)

6 MR. KELLOGG: Mark this as Exhibit 22, please.

7 (Deposition Exhibit 22 was marked for
8 identification.)

9 BY MR. KELLOGG:

10 Q. I show you Exhibit 22, Mr. Videnieks. Look it
11 over and tell me whether that is a copy of what we have
12 referred to here as modification 12 to the INSLAW 1982
13 contract with the Department of Justice.

14 A. Yes, sir, it is.

15 Q. This is what you have referred to in your
16 testimony as mod 12?

17 A. Yes, sir.

18 Q. Turning to page 2, subparagraph B, where it
19 recites that the government shall limit and restrict the
20 dissemination of the software and provides that under no
21 circumstances shall there be dissemination beyond the places
22 limited, pending resolution of the issues extant between the

1 contractor and the government under the terms and conditions
2 of the contract.

3 Now, when the modification there speaks of
4 pending resolution of the issues extant, was this data
5 rights issue one of the issues that was extant and that you
6 were referring to there?

7 A. INSLAW's claim as to data rights.

8 Q. Yes.

9 A. Okay. Yes, sure, it was.

10 Q. When you talked here about resolution of the
11 issues, the way that issue of INSLAW's claim to data rights,
12 the way that was intended to be resolved was the way set out
13 in your offer in Exhibit 20, I believe it is; isn't that
14 right, in substance?

15 A. I think another letter dealt with the subject,
16 the transmittal letter which covered modification number 12,
17 which I would like to look at.

18 Q. Mr. Videnieks, I don't think I have got that.

19 A. Well, it was very important.

20 Q. I am sure it's somewhere, I don't have it in
21 front of me.

22 Can you tell me just what your recollection --

1 A. I would like to read it before I try to
2 remember what the letter said. It's an important letter,
3 it's directly related to modification number 12. I think it
4 should be considered together.

5 Q. When you say it's a cover letter, is it a cover
6 letter from you to Mr. Sherzer or from Mr. Sherzer to you?

7 A. It may have been addressed from me to INSLAW.

8 Q. It may have been, you say, a letter from you to
9 INSLAW?

10 A. Right, it was two pages. In fact, Mr. Sherzer
11 answered taking exception to some of the points contained in
12 that letter.

13 Q. I take it this would have preceded the
14 execution of the mod 12, on April 11?

15 A. It transmitted the finally executed
16 modification to the contract.

17 MR. LYONS: Could we go off the record a
18 minute?

19 In other words, (Off-the-record discussion.)

20 MR. KELLOGG: Back on the record.

21 BY MR. KELLOGG:

22 Q. Again, speaking about the reference in the mod

1 12 to resolution of the issues extant, would the parties'
2 intention as to how to resolve those issues be as set forth
3 in your letter of March 18, 1983, Exhibit 20, as modified,
4 if at all, by your subsequent transmittal letter or any
5 other subsequent correspondence?

6 A. I don't think my letter of March 8 --

7 Q. Not 8, it's 18.

8 A. 18. My question is, I have to look at it again
9 to see if it addresses methodology.

10 Q. I don't want to get confused with your
11 methodology. It does not address a method for INSLAW to
12 prove to your satisfaction or to the government's
13 satisfaction that any particular enhancements are
14 proprietary, you are correct about that.

15 But it does discuss simply the procedure that
16 there is going to be a process whereby INSLAW will have the
17 obligation to try to prove that it has privately funded
18 enhancements.

19 In other words, it would have to identify them
20 and show you that these things were privately funded and
21 that they are not required under this contract.

22 A. To our satisfaction, yes.

1 Q. Yes, okay. It was that process that was
2 envisioned when you spoke in mod 12 of resolving the issues
3 extant between the parties; isn't that right?

4 A. It is in plural, though, and this is one of
5 those issues referred to.

6 Q. All right, data rights was one issue. The
7 other issue, I take it, was what at the time, the advance
8 payments?

9 A. I think modification number 12, on page 3,
10 states: C, government shall continue making advance
11 payments to the contractor. So that apparently was another
12 issue.

13 Q. Would it appear by saying in the contract in
14 mod 12 that the government shall continue making the advance
15 payments, would that imply that the advance payments issue
16 was resolved?

17 A. It would imply that the issue was resolved so
18 long as the contractor adhered to the terms of article, the
19 article dealing with advance payments.

20 Q. Yes. Then wouldn't it seem to indicate,
21 then --

22 A. Which is D.

5 those issues referred to.

6 Q. All right, data rights was one issue. The
7 other issue, I take it, was what at the time, the advance
8 payments?

9 A. I think modification number 12, on page 3,
10 states: C, government shall continue making advance
11 payments to the contractor. So that apparently was another
12 issue.

13 Q. Would it appear by saying in the contract in
14 mod 12 that the government shall continue making the advance
15 payments, would that imply that the advance payments issue
16 was resolved?

17 A. It would imply that the issue was resolved so
18 long as the contractor adhered to the terms of article, the
19 article dealing with advance payments.

20 Q. Yes. Then wouldn't it seem to indicate,
21 then --

22 A. Which is D.



1 Q. Wouldn't it seem to indicate, then, that the
2 advance payments question would not be one of the pending
3 issues to be resolved, referred to in B?

4 A. It may be, it may be, sir.

5 Q. Do you recall any other issue that decides the
6 data rights that was to be resolved as referred to there?

7 A. It's a very general term. It's a broad term,
8 issues extant. We had --

9 Q. Yes, I don't --

10 A. Data requirements was an issue, INSLAW's claim
11 to data rights was an issue. I believe advance payments was
12 still an issue, I am not sure.

13 Q. It was an issue up to the point of execution of
14 the modification.

15 Q. But here you are talking about resolution of
16 issues which are tied to the dissemination of the software;
17 isn't that right?

18 A. What issues would that be in your opinion? You
19 are limiting. I am saying it's broad, you are saying it's
20 limited, you are saying it's narrow.

21 Q. I am not. I am trying to ask you for your
22 recollection.

1 month? A. My recollection is, for example, are the three
2 issues which I just enumerated, data rights, data
3 requirements, advance payments, contractors abiding by the
4 advance payments provision, the -- there were some the others
5 inter-related issues discussed which led up to modification
6 number 12. (Deposition Exhibit 23, 23 A, 23 B, 23 C)

7 Q. And by this subparagraph B here, the government
8 was agreeing to restrict the dissemination of the software
9 as specified there pending resolution of all of those issues
10 that you are talking about? Yes, it's in the middle set that

11 I gave A. That's the -- to the best of my recollection,
12 what I read there. (Joyce Deroy to Hamilton, together

13 with Q. Following the execution of this mod 12, did
14 INSLAW ever propose a method for demonstrating the four
15 proprietary enhancements? to leave out one of them?

16 A. I think I remember that in INSLAW's
17 correspondence they do offer methodology and ask for our
18 concurrence. (Pause.)

19 Q. In your recollection, how long was that after
20 the mod 12 was executed? OGG: (Pause.)

21 A. I don't recall. that set of documents marked

22 exhibit Q. Would it be, do you think it was within a

1 month?

2 A. I don't recall.

3 MR. KELLOGG: I would ask that you mark this
4 set of exhibits, the first one as exhibit 23, and the others
5 as 23 A, B and C.

6 (Deposition Exhibit 23, 23 A, 23 B, 23 C
7 and 23 D were marked for identification.)

8 MS. SPOONER: Is that an identifiable set that
9 I have, Mr. Kellogg?

10 MR. KELLOGG: Yes, it's in the middle set that
11 I gave you. I think it should be the first four documents.
12 It states with memo of Joyce Deroy to Hamilton, together
13 with three attachments.

14 MS. SPOONER: Thank you. Now I have four
15 attachments, did you mean to leave out one of them?

16 MR. KELLOGG: Is the fourth one?

17 MS. SPOONER: I have an A, B, C and D. D is --

18 (Pause.)

19 MR. KELLOGG: I misspoke.

20 BY MR. KELLOGG:

21 Q. Take a look at that set of documents marked
22 exhibit 23 and 23 A through D, I believe it is.

1 A. I don't. (Witness examines document.)

2 here. A. I looked at them.

3 BY MR. KELLOGG:

4 Q. Mr. Videnieks, exhibit 23 and 23 A through D
5 consists of a memorandum from Joyce Deroy to Mr. Hamilton,
6 together with some attachments which appear to be prepared
7 in response to this matter and for submission to you.

8 Q. Do you recall ever seeing those before?

9 A. I think I have these documents in my file. As
10 to when I received them, I don't recollect.

11 Q. I think it's fair to say that you probably
12 received them sometime after they are dated there in early
13 April of --

14 A. I don't know whether INSLAW would have
15 submitted internal documents to us attached to their
16 correspondence, they may have.

17 A. I know I have -- I have seen these documents.
18 I have seen them recently, and I can't recall when I saw
19 them a few years ago.

20 Q. Does this look like the submission that you
21 received from INSLAW regarding a proposed method for
22 identifying the enhancements?

1 A. I don't think I see a methodology described in
2 here. The Joyce Deroy memorandum identifies Bill Hamilton,
3 claimed proprietary enhancements -- demonstration of funding
4 sources. (Witness examines document.)

5 Their conclusions, but not the methodology, to
6 the best of my cursory review here, what I can conclude is
7 that these are conclusory-type documents.

8 Q. At some point, though, your recollection is
9 that INSLAW did submit to you a proposed methodology for
10 performing this task, that is, for identifying the privately
11 funded enhancements for your consideration? (Witness examines document.)

12 A. At some time they did, yes. (Witness examines document.)

13 MR. KELLOGG: Mark this as exhibit 24.

14 Q. Again, (Deposition Exhibit 24 was marked for
15 identification.) regarding this exhibit, wasn't it?

16 A. Yes, sir. (Witness examines document.)

17 A. I have looked at this exhibit 24. (Witness examines document.)

18 BY MR. KELLOGG:

19 Q. Exhibit 24, is that a copy of a letter that Mr.
20 Sherzer sent you, together with a series of further
21 materials on this enhancement issue?

22 A. Yes, sir. (Witness examines document.)

1 MR. KELLOGG: Mark this as Exhibit 25.

2 (Deposition Exhibit 25 was marked for
3 identification.)

4 (Witness examines document.)

5 MS. SPOONER: Exhibit 25 contains two
6 attachments?

7 MR. KELLOGG: Yes.

8 A. Okay, I have looked at 25.

9 BY MR. KELLOGG:

10 Q. Is 25 a copy of a May 4, 1983, letter to you
11 from Harvey Sherzer, together with two attachments that were
12 enclosed?

13 A. Yes, sir.

14 Q. Again, this letter was additional follow-up
15 regarding this enhancements issue, wasn't it?

16 A. Yes, sir.

17 Q. If you will turn to the second attachment which
18 appears to be --

19 A. Could I comment on the letter, first, second
20 paragraph?

21 Q. Sure.

22 A. Mr. Sherzer seems to be saying here that, I

1 will read the government enjoys "unlimited rights under the
2 contract."

3 Q. Yes, his letter speaks in terms of the
4 copyrightability of software provided which was developed at
5 government expense, if you will look at that earlier
6 sentence there. Maybe I misunderstood your point.

7 To clarify, the letter addresses two matters,
8 one being the enhancements question and the second being
9 this copyright question which is addressed in the second
10 paragraph of the letter; is that correct?

11 A. I just brought up the point that Mr. Sherzer
12 states that we have unlimited rights under the contract.

13 Q. Yes, he is referring there to software
14 developed at government expense.

15 A. Items delivered under the contract. It's A
16 side issue anyway. I thought it was interesting.

17 Q. In any event, if you turn to the second
18 attachment, a memorandum dated April 26, 1983, to Mr.
19 Sherzer by Joyce Deroy.

20 Before we get to the memorandum, in the first
21 paragraph of his cover letter Mr. Sherzer says, the last
22 phrase of the second sentence, "The company proposes the

1 accumulation of additional supporting information and
2 documentation using the methodology described in the
3 memorandum attached hereto."

4 A. Which, I am lost. Where are we?

5 Q. I am sorry.

6 MS. SPOONER: You referred to the attachment.
7 I think you are reading from the letter.

8 BY MR. KELLOGG:

9 Q. I jumped back to the cover letter.

10 A. Okay.

11 Q. The second sentence of the cover letter, Mr.
12 Sherzer says, "The company proposes the accumulation of
13 additional supporting information and documentation using
14 the methodology described in the memorandum attached
15 hereto."

16 I assume that the memorandum describing the
17 methodology that he is talking about there is this second
18 attachment, the April 26 memo of Joyce Deroy; is that
19 correct?

20 A. Are you asking me to comment on the assumption?

21 Q. Well, he wrote you the letter. Is that what
22 you understood him to mean?

accumulation of additional supporting information and documentation using the methodology described in the memorandum attached hereto."

A. Which, I am lost. Where are we?

Q. I am sorry.

MS. SPOONER: You referred to the attachment. I think you are reading from the letter.

BY MR. KELLOGG:

Q. I jumped back to the cover letter.

A. Okay.

Q. The second sentence of the cover letter, Mr. Sherzer says, "The company proposes the accumulation of additional supporting information and documentation using the methodology described in the memorandum attached hereto."

I assume that the memorandum describing the methodology that he is talking about there is this second attachment, the April 26 memo of Joyce Deroy; is that correct?

A. Are you asking me to comment on the assumption?

Q. Well, he wrote you the letter. Is that what you understood him to mean?

1 A. It's one of these two memoranda. Let's see if
2 the first one contains any methodology or not.

3 Q. The first one seems to deal with the copyright
4 question, and that is why I --

5 A. Then he must be referring to the second
6 memorandum.

7 Q. In any event he goes on to say, now I am again
8 referring not to the memo, but to the cover letter, he goes
9 on to say in the last sentence of the first paragraph,
10 "Since the effort necessarily will be time consuming, I
11 would request that you contact me, indicating whether the
12 approach proposed suffices for the department's purposes and
13 whether any revisions there to are suggested."

14 So clearly, he is submitting this to you for
15 review and asking you or the other government
16 representatives to tell him, this is what we propose to do,
17 is this going to be satisfactory for your needs, isn't that
18 the gist of that?

19 A. That's true.

20 Q. All right. Do you recall making any response
21 to that question, in effect, that he asked of you, whether
22 this was adequate for the government's needs?

1 A. I don't specifically recall a response. I do
2 recall that the government chose to let INSLAW determine,
3 itself, which methodology best suited their ability to
4 comply with our requirement under article 30.

5 Q. I take it the government, you do recall that
6 the government declined to tell INSLAW what there was about
7 this particular methodology that was unsatisfactory?

8 A. I don't recall what the government said. But I
9 do remember we had specific technical problems with respect
10 to the methodology.

11 Also, we were -- in the situation, we were
12 after the end result. We are after fulfillment of the
13 request; the methodology is up to the contractor. One could
14 approve a certain methodology and then the end result may
15 not satisfy the requirement.

16 Q. So you were not, in any event, you do recall
17 that the government did not approve this proposed
18 methodology; isn't that right?

19 A. Did he ask for our approval? We were not in an
20 approval situation. The request is, please contact me
21 whether the proposed approach suffices.

22 Q. Well?

1 A. We discussed it among ourselves and decided
2 that since INSLAW is making the claim that any supporting
3 data must be readily available, and we would rather not get
4 involved in their in-house effort how to produce the
5 required documentation software.

6 Q. All right. So you decided not to tell INSLAW
7 whether or not this particular proposed methodology would
8 suffice --

9 A. I don't recall that specifically. We may have
10 commented to them with respect to this specific proposed
11 methodology. However, we, overall, decided that the method
12 of satisfying our request is INSLAW's decision.

13 Q. Implicit in that is you decided that INSLAW
14 could do whatever it wanted in terms of the methodology and
15 you wouldn't tell them in advance whether the methodology
16 was acceptable or unacceptable, you decided you were going
17 to wait to see whatever the end result was that they
18 submitted and you would review that material and see whether
19 the material satisfied the contract, and you wouldn't get
20 involved with telling them anything about the methodology?

21 A. Yes.

22 Q. Is that fair to say? (the record discussion.)

1 A. Yes, that's fair to say because we felt that
2 since they made a claim, the supporting data was readily
3 available.

4 Q. All right, do you have any --

5 A. Or should be readily available.

6 Q. Let me ask you this. Going back to Mr.
7 Sherzer's May 4 letter to you there, he indicates there that
8 to gather the information together according to the
9 methodology that they were proposing would be quite time
10 consuming.

11 Did the government feel that that claim that it
12 would be time consuming was inaccurate?

13 A. I can't recall any specific feelings on my part
14 or on the feelings of others how we felt with respect to
15 Sherzer's statement there.

16 MR. KELLOGG: Mark this as 26, please.

17 (Deposition Exhibit 26 was marked for
18 identification.)

19 (Witness examines document.)

20 MS. SPOONER: Would you be coming to a
21 convenient stopping point soon?

22 (Off-the-record discussion.)

1 A. Question. This refreshes my memory. However,
2 if we had this letter as the next exhibit, we would have
3 saved some time. I could have read it beforehand, if we
4 asked prior questions.

5 BY MR. KELLOGG:

6 Q. The way this works, Mr. Videnieks, is, I will
7 have to do the questions, you will have to do the answers.

8 A. Right.

9 Q. I will try to do the best I can. I know that
10 you are trying to do the best that you can.

11 A. That's right.

12 Q. Referring to exhibit 26, that would appear to
13 be a response by you dated June 10, 1983, to Mr. Sherzer to
14 his letter to you of May 4 that we have marked here as
15 Exhibit 25; is that correct?

16 A. Yes.

17 Q. I gather that reading the letter, this
18 refreshes your recollection, and in this letter you did say
19 in the last paragraph that, "your letter," referring, now,
20 to Mr. Sherzer's May 4 letter to you, "requests that the
21 government either approve the INSLAW proposal for
22 identifying and demonstrating that certain enhancements are

proprietary, or suggest revision to that approach. The government is in a position to do neither. The burden of identifying those enhancements and proving that they were in fact developed at private expense outside the scope of any government contract remains with INSLAW."

So does this refresh your recollection that you actually advised Mr. Sherzer of the position that you indicated you recalled was the substance of the position the government people were taking?

A. Yes.

Q. Who wrote this letter, sir?

A. It -- I can't recall who the -- it may have been a joint effort by counsel, EOUSA and me. I don't specifically recall who put the major effort into it.

Q. At this point counsel would still be Mr. William Snider?

A. I think so, on June 10, '83, I think he was still there.

Q. EOUSA would probably include Mr. Brewer and Mr. Rugh at that point?

A. Yes, sir and Mike Snyder.

Q. And Mike Snyder as well?

proprietary, or suggest revision to that approach. The government is in a position to do neither. The burden of identifying those enhancements and proving that they were in fact developed at private expense outside the scope of any government contract remains with INSLAW."

So does this refresh your recollection that you actually advised Mr. Sherzer of the position that you indicated you recalled was the substance of the position the government people were taking?

A. Yes.

Q. Who wrote this letter, sir?

A. It -- I can't recall who the -- it may have been a joint effort by counsel, EOUSA and me. I don't specifically recall who put the major effort into it.

Q. At this point counsel would still be Mr. William Snider?

A. I think so, on June 10, '83, I think he was still there.

Q. EOUSA would probably include Mr. Brewer and Mr. Rugh at that point?

A. Yes, sir and Mike Snyder.

Q. And Mike Snyder as well?

1 A. Right.

2 Q. Do you have any recollection of any particular
3 input that Mr. Rugh made in the drafting of this letter?

4 A. I am sure he must have participated. The parts
5 of the letter which deal with technical matters, I am sure
6 that Mr. Rugh may have had an input or a role in drafting.

7 Q. How about the last paragraph in which you
8 decline to either approve or disapprove the suggested
9 procedure that INSLAW had advanced, did Mr. Rugh have any --

10 A. That could have been me paraphraseing a
11 memorandum from either Rugh or counsel or anybody, or it
12 could be my lifting out language from memoranda submitted to
13 me. I don't specifically recall.

14 Q. Do you recall getting memoranda from either the
15 executive office or Mr. William Snider, or both?

16 A. Memoranda and/or telephone conversations,
17 advice.

18 Q. Do you recall any particular input in the
19 drafting of this letter that Mr. Brewer may have made?

20 A. I don't recall particular input. That does not
21 mean it was not made.

22 Q. I gather you don't recall Mr. Brewer having any

1 input in that last paragraph?

2 A. Not specifically. When one, in a situation
3 like this, establishes a deadline, it is usually discussed
4 among procurement, legal and project.

5 Q. Mr. Videnieks, I think it's fair to say that
6 this issue was never resolved, that is to say, INSLAW never
7 did submit an identification of all of its claimed
8 enhancements in a manner that the government was satisfied
9 with; isn't that correct?

10 A. I think the operative word is not
11 identification, I think it's -- there is a second word which
12 we should use, which is substantiation.

13 Q. All right, identification and substantiation?

14 A. And substantiation.

15 Q. Whatever it is, so far as the government was
16 concerned, INSLAW never did submit it in a form satisfactory
17 to the government; isn't that right?

18 A. To the best of my recollection, INSLAW did not
19 show to our satisfaction that, indeed, there were claimed
20 proprietary enhancements.

21 Q. As a matter of fact, sometime in August of
22 1983, after further exchange of letters, there was an

1 informal agreement reached that simply INSLAW was not going
2 to seek to try to prove this any further at that point, is
3 that right?

4 A. I don't recall any such agreement. That does
5 not mean it was not made. To the best of my recollection,
6 the issue was still open.

7 Q. I don't mean to imply the issue wasn't open.
8 But what I am reading from here, and the reason I ask this
9 question is an August 1, 1983, handwritten memo of Mr.
10 Gizzarelli, which says as follows: "In a meeting this
11 date," August 1, 1983, "Peter Videnieks, Brick Brewer and I
12 agreed that Joyce Deroy and her group would do no additional
13 work to justify INSLAW's claim to proprietary rights to
14 PROMIS because Peter and Brick will not accept our
15 methodology to substantiate our claim."

16 MS. SPOONER: Is there some reason, Mr.
17 Kellogg, why you prefer the witness not see that?

18 MR. KELLOGG: No, you are welcome to see it. I
19 mean, it's not his memo.

20 MS. SPOONER: I understand.

21 MR. KELLOGG: Isn't that in your papers?

22 MS. SPOONER: Legal sized?

MR. KELLOGG: Yes.

MS. SPOONER: I don't believe so.

MR. KELLOGG: Let's mark this one. You can take a look.

(Deposition Exhibit 27 was marked for identification.)

(Witness examines document.)

A. Speaking for me, it's an inaccurate memorandum.

BY MR. KELLOGG:

Q. Do you recall attending a meeting with yourself, Mr. Brewer and Mr. Gizzarelli in that timeframe?

A. I don't recall it, any such meeting. However, that does not mean it did not take place.

Implicit in this note is that we approved Joyce Deroy's effort up to a point.

Q. No, well --

A. The way it's stated.

Q. I don't read it as making that implication and I am not trying to assert that implication.

A. Neither did we -- I am speaking for myself, not for Brick.

Q. Yes, okay.

A. The memorandum says in a meeting, I, Brewer and Gizzarelli agreed that Joyce Deroy and her group would do no additional work. I don't recall such -- I would have to deny making any agreement.

A. The position taken by us was that it's INSLAW's own concern as to how they meet our requirement under the data requirements clause.

A. This is a loaded memorandum, seems to imply that the government was working jointly or something with INSLAW to -- for INSLAW to comply with our request. That was not the case.

Q. You were not working jointly with INSLAW --

A. No.

Q. -- to assist INSLAW in answering your request?

A. Excuse me?

Q. I say the government was not working jointly --

A. That memorandum, to me, my reading it, implies some approval or agreement by the government in Joyce's efforts. That's contrary to our positions taken.

Q. As I say, your position is the government never agreed to any efforts that Ms. Deroy may have made, whatever efforts she made that was --

1 A. I don't know what efforts --

2 Q. I understand. Whatever efforts she made was
3 INSLAW's business and the government had nothing to do with
4 it, is that right, as far as agreeing or disagreeing?

5 A. Yes. It was my position that INSLAW meet the
6 requirement the best they knew how.

7 Q. And how they did it was up to INSLAW?

8 A. Since it was their claim. And when one
9 normally makes a claim, the substantiation should be easily
10 available.

11 Q. In any event, there is no dispute that INSLAW
12 never did substantiate its claims to the government's
13 satisfaction on this proprietary enhancements question?

14 A. That is correct.

15 MR. KELLOGG: I think this is a good time to
16 stop for lunch, and if we could, let's come back at 1:30

17 (Whereupon, the deposition was recessed at
18 12:30 p.m., to resume at 1:30 p.m.)

19 (Off-the-record discussion.)

20 BY MR. KELLOGG:

21 Q. Mr. Videnicks, have you reviewed quickly what

22 has been marked as Exhibit 28?

AFTERNOON SESSION

(1:30 p.m.)

BY MR. KELLOGG:

Q. Mr. Videnieks, we are back from lunch break and ready to resume the deposition.

Now, initially this afternoon, Mr. Videnieks, I want to ask you a series of questions governing, relating to what I will call generally the data center time sharing cost dispute.

MR. KELLOGG: I want to mark this as the next exhibit, Exhibit 28.

(Deposition Exhibit 28 was marked for identification.)

MS. SPOONER: This is the new one that you gave me, is that right?

MR. KELLOGG: Yes.

(Witness examines document.)

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. Mr. Videnieks, have you reviewed quickly what has been marked as Exhibit 28?

A. Yes, sir.

Q. That appears to be a copy of a negotiation agreement between the government and INSLAW, dated December 15, 1982; is that correct?

A. Yes.

Q. Have you ever seen that before, to your recollection?

A. Sir?

A. Yes, sir.

Q. Can you describe to me just generally what a negotiation agreement is in relation to one of these computer contracts?

A. This negotiation agreement pertains to all government contracts.

Q. Between the government and INSLAW?

A. Right.

Q. So this is something that would have been reached outside of the contract that you were the contracting officer on with INSLAW ; is that right?

A. Yes, sir.

Q. But by definition it had application in certain respects to the administration of your contract, is that

1 right?

2 A. In certain respects in accordance with
3 applicable regulations.

4 Q. Turn your attention to paragraph C on the first
5 page under computer center.

6 A. Yes.

7 Q. Do you see down there where it says, the third
8 line, "Fixed with carry forward provision effective from
9 10-1-82," and then under the column "Period 2" it says
10 9-30-83. Then it has a rate, .067/SRU. Do you see that,
11 sir?

12 A. Yes, sir.

13 Q. Is it accurate to describe that number there,
14 the rate .067/SRU, as being a fixed rate with a carry
15 forward provision to be applied to INSLAW's computer center
16 operations for purposes of certain parts of the INSLAW
17 contract?

18 A. No.

19 Q. You tell me what it is.

20 A. I think the .067/SRU is not a rate, but a
21 dollar or cent amount. It's not identified --

22 Q. Why would it be in the column headed rate if

1 it's not a rate?

2 A. Well, maybe you feel it's a rate. You asked my
3 opinion what it is, I feel it was dollars and cents.

4 Q. But you agree it's in a column that is labeled
5 rate, don't you?

6 A. Yes, sir.

7 Q. It doesn't have any dollar sign on it, does it?

8 A. No, sir.

9 Q. Whether it's a dollar amount or a percentage or
10 some other type rate, I take it that you would not dispute
11 it is characterized here as being fixed with a carry forward
12 provision; is that correct?

13 A. The words "fixed with carry forward provision"
14 are in line with the .067/SRU.

15 Q. Well, if you notice up in the first line under
16 that same heading, type, it says, describing the period of
17 January 1 of '81 to 9-30-81, it has the word provisional.

18 A. Yes.

19 Q. And then in contrast to that in the next two
20 lines, including the third line that I have already called
21 your attention to for fiscal year '83, both of them in
22 contrast say "fixed with carry forward provision," is that

correct?

A. Yes.

Q. Do you know, sir, what the difference is between a provisional type and a fixed with carry forward provision?

A. Fixed rates can be provisional.

Q. Pardon me?

A. Fixed rates can be provisional.

Q. Well, that's not my question. My question is, do you know what --

A. There may be no difference, sir. My answer is, fixed rates can be provisional.

Q. On this piece of paper they appear to be described in different ways. One appears to be described with the single word provisional, and the other two are described, fixed with carry forward provision.

Now, my question is, do you know as you look at that whether those two different terms mean anything different from each other?

A. No, sir.

Q. They may or may not, you just don't know?

A. I said no, sir.

Q. Well, may they mean something different and you just don't know whether they mean two different things?

A. I think these are all provisional rates, sir.

Q. Would it be your testimony that you think these two terms mean effectively the same thing?

A. My testimony is that this document contains provisional rates.

Q. Mr. Videnieks, you know, we have been here for almost two days now, and I am not trying to prolong this. But my question is not, I am not trying to get into a legal debate with you.

Q. I am just trying to probe your understanding, if you have any, of these terms in the context of the government contract administration that you were charged with.

And my question to you is simply, as these two different terms are used on this document, do the two terms mean anything different from one another in your understanding of them, or do they both mean the same thing, or do you not know?

A. All of the rates contained on this document are provisional rates. They all are fixed provisionally. In

other words, these are rates, provisional reimbursement rates. They are fixed for a period of time.

Q. I guess let me ask you this question. In your opinion would this mean anything different if, instead of having the phrase "fixed with carry forward provision" on the two lines relating to fiscal year '82 and fiscal year '83, if instead of that they had the word provisional, would there be any difference in its meaning to you?

A. No. These are all --

Q. All right, you have answered the question.

A. These are provisional rates.

Q. All right.

A. Rates, slash, amounts.

MR. KELLOGG: Mark that as Exhibit 29, please.

(Deposition Exhibit 29 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 29, please. I will just tell you, that is a part of an appendix to the request for proposal by the government in this contract that you were contracting officer on.

(Witness examines document.)

BY MR. KELLOGG:

Q. Do you recall ever seeing that before, sir?

A. Yes, sir.

Q. Does that appear to be a copy of an appendix to the RFP that was issued in connection with this particular contract or what became this INSLAW contract?

A. No, sir.

Q. What does it appear to you to be?

A. It appears to be an appendix to the statement of work I was included in the RFP.

Q. It was included in the RFP that was issued in connection with this contract, yes?

A. Not in connection with the contract, but that resulted in the contract, yes.

Q. All right, that resulted in the contract.

A. Yes.

Q. Looking at page 2, if you can look at page 2 of that document. The first full paragraph but the second paragraph on the page, you see there in the middle, towards the end of the paragraph where it says, "No costs were maintained on the development of the system, so this could not be evaluated, but JMD estimated that it was costing

about 500,000 a year to run the system in the Chicago office, alone"?

A. Yes, sir.

Q. Do you recall that fact ever coming to your attention in connection with the time sharing dispute that developed in 1983 and 1984 here with INSLAW?

A. I don't know.

MR. KELLOGG: Mark this, please, it's Exhibit 30.

(Deposition Exhibit 30 was marked for identification.)

(Witness examines document.)

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

MR. KELLOGG: Let's go back on the record.

BY MR. KELLOGG:

Q. Mr. Videnieks, looking at Exhibit 30, this appears to be a copy of a letter sent to you by date of April 8, 1983, from Murray Hannon, the INSLAW controller; is that correct?

A. Yes, sir.

Q. In that letter he makes reference to a letter

from Mr. James Dimm, to you of March 8, 1983.

He also indicates, referring to the letter, that the Dimm letter indicates that, "Your offices are submitting transactions at a rate far greater than we had anticipated when we submitted our initial cost proposal. It is our understanding that you do not wish to restrict their usage of the system, and, therefore, we have prepared this request for modification."

And he also refers to a rationale for the time sharing billing procedure.

Do you recall receiving this letter and the attachments to it?

A. I wish I could see the attachments, sir. That would refresh my memory. The letter obviously is addressed to me, signed by Hannon.

Q. Let me ask you this. I take it that you do recall at some point receiving a letter from somebody at INSLAW advising you or claiming that because the various U.S. attorneys offices were using the time sharing computer facility at a rate above that which had been estimated, that INSLAW was asking to increase the allowable costs for time sharing under the contract, you remember them --

1 A. That's not what this letter says, sir.

2 Q. I am not saying it does.

3 A. I am looking at this letter, it's addressed to
4 me, it's signed. I acknowledge its existence.

5 Q. Well, the first sentence says, "The purpose of
6 this letter is to request a contract modification to cover
7 costs and fee associated with the higher and anticipated use
8 of our time sharing service," isn't that right?

9 A. Yes, sir, but you mentioned allowable costs.

10 Q. Now, if I did, I did that inadvertently and I
11 know that is a term of art in government contractese, and I
12 didn't intend to. I didn't intend to.

13 To the best of your recollection, was it in
14 this letter and any associated attachments that INSLAW first
15 made a claim to you that they wanted to modify the time
16 sharing costs because they claimed that the use was above
17 what it was anticipated to be or estimated to be?

18 A. Sir, I have to answer no, because your question
19 is not technically correct.

20 Q. Well --

21 A. So the answer is no.

22 Q. All right. Do you recall INSLAW ever sending

1 you a letter making this request that you modify the
2 contract because the time sharing usage was above what had
3 been anticipated?

4 A. Yes, sir.

5 Q. All right. I take it this letter, Exhibit 30,
6 may or may not be such a request?

7 A. It may or may not. Depends on the attachments.

8 MR. KELLOGG: Mark this as 31, please.

9 (Deposition Exhibit 31 was marked for

10 identification.)

11 BY MR. KELLOGG:

12 Q. Take a look at that memo that is marked Exhibit
13 31.

14 (Witness examines document.)

15 BY MR. KELLOGG:

16 Q. Have you ever seen that before, sir?

17 A. Yes, sir.

18 Q. This Exhibit 31, does it appear to be a copy of
19 a memorandum from Jack Rugh to you, dated May 6, 1983?

20 A. Yes, sir.

21 Q. Does it appear to be Mr. Rugh's comments on the
22 request for contract modification that was made in Murray

1 Hannon's letter to you of April 8, identified here as
2 Exhibit 30?

3 A. Yes, sir.

4 Q. Mr. Rugh's comments are directed to the time
5 sharing cost issue, are they not?

6 A. Yes, sir.

7 Q. Turn to page 2 of the memorandum, Exhibit 31.
8 Down there indented in subparagraph 2, this is a part of Mr.
9 Rugh's analysis of his attempt to estimate INSLAW's actual
10 costs, I believe.

11 And in part 2 he mentions there, "INSLAW has
12 three people on their data center operations staff.
13 Assuming that one person is devoted full-time to time
14 sharing operations, (a considerable over estimate), the
15 operations cost should not exceed \$2,000 per month."

16 Do you see that there, sir?

17 A. I see it.

18 Q. Did it ever come to your attention at any point
19 after this, after May 6 of 1983, that that estimate that Mr.
20 Rugh was making, which was based on three people, three
21 employees of INSLAW working at the data center on this time
22 sharing, did it ever come to your attention that that

assumption was incorrect?

A. I don't know.

Q. You have no recollection of it ever coming to your attention at any time after May 6 of 1983?

A. I don't remember right now. I'd like to read the rest of this memorandum.

Q. Sure, go ahead.

(Pause.)

A. Okay, I have looked at it.

BY MR. KELLOGG:

Q. Well, my question to you is, and maybe you have answered, I don't think you did, but in that subparagraph 2, on page 2, as a part of Mr. Rugh's analysis of what he is trying to estimate to be INSLAW's actual costs of operating the computer and the time sharing, part of that, he mentions that INSLAW has three people on their data center operating staff, operations staff.

And he utilized that premise, that factual premise, in calculating what he estimates the costs for that part of the operation should be; isn't that right?

A. It appears to be a part of his technical analysis.

Q. My question to you is simply, did it ever come to your attention at any time after May 6, 1983, that in fact INSLAW did not have only three people working on the data center operations staff in connection with the time sharing, but in fact, had a good deal more?

A. I think the number -- the answer is, I don't know. But, I don't know, the number fluctuated.

Q. I am not talking about their being three, in fact, when Mr. Rugh wrote his memo, and later INSLAW adding or subtracting some people at a later time, that is not my question.

My question to you is, do you have any recollection of ever finding out that when Mr. Rugh wrote this memo, his assumption that there were three people whose time was attributable to this time sharing data center operation, that that assumption was not correct and that there were substantially more employees who were working on this?

A. No.

Q. That never came to your attention?

A. No. I personally went out to the data center, together with the cognizant auditor, and the official in

1 charge of negotiating provisional rates, including SRU's,
2 and saw only one person at the data center.

3 Q. Did it ever come to your attention that there
4 were other people at other locations working on the time
5 sharing matter, the time sharing computer, whose time was
6 being charged to this?

7 A. Yes.

8 Q. As a matter of fact, all told, there were
9 something like 17 people who were working on the time
10 sharing work; isn't that right?

11 A. That is -- are we still talking about paragraph
12 2?

13 Q. Well --

14 A. Which talks about the data center.

15 MR. KELLOGG: Strike that.

16 BY MR. KELLOGG:

17 Q. I recognize paragraph 2 talks about the data
18 center. But I think if you will read through the various
19 components of his calculation of an estimated cost of
20 running the time sharing operation, that's the only manpower
21 figure that he calculates in there.

22 A. It's a very complex and lengthy memorandum. I

1 would have to read it probably three or four times to be
2 able to discuss it with you.

3 Q. Well, sir, I am just asking you. You can take
4 as long as you want, and if you want to be here until
5 midnight we will do that.

6 MS. SPOONER: No, we won't.

7 BY MR. KELLOGG:

8 Q. I want you to tell me whether there is anything
9 in here that you see that you can point your finger to where
10 Mr. Rugh has calculated any manpower cost for the operation
11 of this time sharing center other than these three people in
12 that paragraph 2.

13 A. I am a nontechnical person, would have to
14 evaluate an expert's analysis. I sought his advice, not
15 vice versa. I could make an attempt at it, if you wish.
16 But it will be time consuming.

17 Q. There are six subparagraphs that I see in which
18 he describes the components of his analysis.

19 A. It's his advice to me.

20 Q. I understand.

21 A. I accepted it.

22 Q. I understand that, I am not questioning that

1 you accepted it. I am just asking you a question.

2 The first question is, is there anywhere in
3 this memo that you can point to that Mr. Rugh calculated any
4 manpower costs other than the three people at the data
5 center operations staff in subparagraph 2?

6 A. I will need two hours to analyze it.

7 Q. You can just go right ahead.

8 A. Beginning now, good.

9 MS. SPOONER: Mr. Kellogg, let me just say that
10 we are not going to be here until midnight. As far as I am
11 concerned this deposition is going to end at a reasonable
12 hour. If you want to continue it sometime next week, that
13 is what we will do.

14 I think what this witness is trying to tell
15 you, and he's said it clearly, is that he is not a technical
16 person and that it will take him some time to review this
17 memorandum.

18 If you wish him to take the time to do that
19 that is your prerogative and we will do it. But not at the
20 expense of going until midnight.

21 MR. KELLOGG: My comment of going until
22 midnight is not at my behest, but simply because I, at Mr.

1 Cooper's request, he insisted that however long it takes,
2 that we finish today. I am perfectly happy to carry it over
3 if need be.

4 MS. SPOONER: The question is do you want to
5 spend the time today for this witness to review this
6 memorandum given that he has told you he is not --

7 MR. LYONS: Let's go off the record.

8 MS. SPOONER: Excuse me, may I finish?

9 MR. LYONS: We are off the record, are we not?

10 THE REPORTER: No, we are not.

11 MR. LYONS: I apologize. Excuse me. Finish
12 your statement.

13 MS. SPOONER: This witness has indicated to you
14 that he is not a technical person and does not feel
15 qualified to review the memorandum for the purpose you have
16 asked.

17 He's explained to you it will take him some
18 time to do that. Obviously you are entitled to require him
19 to do that if you wish.

20 I just want to make sure that that is the way
21 you wish to spend this afternoon.

22 (Off-the-record discussion.)

1 BY MR. KELLOGG:

2 Q. Mr. Videnieks, let me ask this question. Maybe
3 we can shortcut this.

4 Did it ever come to your attention at any time
5 after May of 1983 that INSLAW had other employees at its
6 main office on 15 Street, not at the data center in Lanham,
7 who did work connected with the operation of the time
8 sharing center in Lanham, even though they didn't physically
9 work there, did that ever come to your attention?

10 A. We are on the record?

11 Q. Yes.

12 A. Yes, sir.

13 Q. When did it come to your attention, do you
14 recall?

15 A. I don't recall.

16 Q. Would it have been as long as a year after
17 this?

18 A. I don't recall.

19 Q. Would it have been two years after this?

20 A. I don't recall.

21 Q. Was it before the contract terminated that it
22 came to your attention, do you think?

A. Before the contract was terminated?

Q. No, before it ended that March of 1985, by its own terms.

A. It may have.

Q. In any event you get this memorandum that is marked Exhibit 31 from Mr. Rugh. What, if anything, do you do based on Mr. Rugh's analysis that is contained here?

A. I am concerned about this notification of an overrun, impending overrun.

Q. Excuse me, so I understand, when you say this notification of a pending overrun, you are speaking about Hannon's April 8 letter in which he says --

A. Yes, sir, not specifically Jack's memo.

Q. Right. So you are concerned about that. Rugh gives you this comment about it, his technical input. What do you --

A. I am more concerned now.

Q. What do you do as a result of getting this memo?

A. I become concerned that we are being overcharged, this contract, the contract in question is being overcharged for computer center costs.

1 A. I don't recall any interim positions as such.
2 The executive office concurred with the suspension letter, I
3 think they actually concurred on a copy of the suspension
4 letter. Yes, sir.

5 Q. Was that something that you drafted before you
6 had these further discussions with the executive office
7 people, or after? after by Ms. Nagy?

8 A. I can't recall. The letter was drafted by an
9 organization which was known as administrative counsel, at
10 the time. er?

11 Q. Would this have been Mr. William Snider again
12 at this point? know you signed it, but did you have any

13 input A. No, sir. it?

14 Q. Who was the administrative counsel at that
15 time? and the facts are that that lady drafted it. It's a

16 very A. It was a lady attorney working for Mr. Snider.

17 Q. What was her name? you did not have any input --

18 A. I believe her first name was Liz, and last name
19 may have been Nagy, N A G Y. on it?

20 Q. I take it you had discussions with this lady
21 attorney, Ms. Nagy, if that was her name, about this
22 question, as well? I don't recall that. Whether she gave me

A. I don't specifically recall.

Q. But you think you would have had such discussion?

A. Yes, sir.

Q. You believe the eventual letter notifying INSLAW that these payments would be suspended, that would of been initially drafted by Ms. Nagy?

A. Yes, sir.

Q. Did you have any input into the drafting of that letter?

A. I signed it.

Q. I know you signed it, but did you have any of input into drafting it?

A. No, sir, it was -- we felt it was a significant issue, and the facts are that that lady drafted it. It's a very short letter.

Q. So the answer is you did not have any input --

A. I may.

Q. -- except to sign it?

A. I don't recall fine detail as to whether I changed anything that she gave me or not. Whether it was in final form or not, I don't recall that. Whether she gave me

1 the language to use.

2 Q. What is your recollection as to when that
3 notification came?

4 A. Not good. My recollection is not good.

5 Q. Well, I know, but what is the best recollection
6 you have as to when that took place?

7 MS. SPOONER: You are asking this witness for
8 the date of the document?

9 MR. KELLOGG: I am asking him to give me his
10 best recollection as to the time period when this
11 notification of the suspension of payments came in relation
12 to the time the issue was first raised in April and May of
13 '83.

14 BY MR. KELLOGG:

15 Q. Are we talking about three months later, six
16 months later, a year later?

17 A. I think it would have been within three months.

18 Q. All right. Now, I take it the practice was
19 that INSLAW was submitting vouchers every month, pretty
20 much, weren't they?

21 A. I think we, at INSLAW's request, authorized
22 INSLAW to submit vouchers twice a month.

1 Q. All right, so twice a month. Assuming it took
2 two or three months or thereabouts between the time that
3 this issue arose and when your letter went out suspending
4 the payments, or suspending portions of the payment, were
5 you, or did you suspend portions of every succeeding payment
6 until the issue might be resolved at a later point, or did
7 you just suspend payment on specific invoices, vouchers that
8 had already been submitted at that point?

9 A. I don't understand your question.

10 Q. The recommendation that was contained in
11 Exhibit 34 just related to two specific vouchers. It
12 recommended that you consider suspending these particular
13 portions of the payments requested on these two particular
14 vouchers.

15 Yet, obviously, the issue involved, I take it,
16 would keep recurring with each voucher, to the extent that
17 each voucher would be claiming payment for the time sharing
18 costs, the data center costs.

19 And my question in light of that is, when you
20 suspended, did you suspend from that point forward all, so
21 much of each voucher, or just specifically suspend on
22 vouchers that had then already been submitted?

1 A. I did not retroactively suspend money. There
2 is no way to do that.

3 Q. No, I didn't mean retroactively. I don't have
4 the precise facts here in front of me, but let's just assume
5 that when you make your decision to issue a letter
6 suspending, at that particular time INSLAW has three
7 vouchers that they have presented for payment. And you make
8 your decision that you are going to suspend a certain part
9 of each one of those three. Am I --

0 A. It's a bad example. We tried to process
1 INSLAW's vouchers as quickly as we can, we did not try to --

2 Q. Suppose you only have one when you make your
3 decision. The point I am trying to get at is, was your
4 decision to just suspend the one that was then pending or
5 however many were then pending and not acted on, or was your
6 decision also to tell them, look, not only are we suspending
7 on these vouchers, we are going to suspend on every future
8 voucher for time sharing costs on this same rationale until
9 this thing gets settled to our satisfaction, do you
0 understand --

1 A. What decision are you talking about, sir?

2 Q. The decision you say was reflected in your

letter that was drafted by Ms. Nagy and described, I mean, reviewed and considered by all the personnel involved.

A. The suspension letter which I issued with respect -- I don't have a copy of it here, so I can't comment.

Could we please have it?

Q. I don't have the thing, myself.

A. Could I say something off the record?

(Off-the-record discussion.)

MS. SPOONER: Are we going to be able to come up with that letter?

MR. KELLOGG: I don't have it in front of me.

MS. SPOONER: I thought I had it.

MR. KELLOGG: Off the record.

(Off-the-record discussion.)

BY MR. KELLOGG:

Q. Mr. Videnieks, we have not been able to locate at the moment a copy of your suspension letter that we have been referring to here.

Do you have any present recollection as to whether or not the suspension letter that you testified about merely suspended portions of then pending vouchers, or

whether it also suspended future, portions of future payments attributable to time sharing costs? Was this a notice that future payments on that issue would be recalled, suspended, as well?

A. My present recollection is that the letter, which I have not seen, dealt with the two vouchers in question, only.

Q. Is it your recollection that subsequent payments, or subsequent requests for payments were also suspended in the same manner as the ones that were submitted before this letter, the suspension letter that you are talking about?

A. Yes.

Q. Mr. Videnieks, just quickly I want to go back a question or two relating back to Mr. Rugh's May 6, '83 memo, which is Exhibit 31.

Did you ever have occasion to give a copy of this memorandum to anyone at INSLAW, and I am not talking about in discovery, but during the existence of the contract?

A. What does did I have occasion mean, did I give it or did I not give it to them?

Q. Yes, did you ever give it to them?

A. I don't recall.

Q. If you had given it to them, you would recall, wouldn't you?

A. I am not sure.

Q. Do you have any recollection --

A. I normally don't hand out internal memoranda.

Q. So presumably, you didn't give it to them; isn't that right?

A. I don't recall.

Q. Well, the memo and the whole issue was a response to the request or the notice or however you want to call it from Murray Hannon on April 8; isn't that right?

A. I do not understand your question.

Q. This memo, Exhibit 31, was prepared as a comment, commenting on the request that was made by Murray Hannon of April 8; isn't that right?

A. What was Murray Hannon's request of April 8, I would like to look at it.

MS. SPOONER: Look at Exhibit 30.

BY MR. KELLOGG:

Q. It's just the statement that the use of the

time sharing was above the estimated levels --

A. His overrun proposal.

Q. Well, that is the government's characterization.

MS. SPOONER: Maybe it would help if you could refer to these by document numbers because he has probably a couple dozen exhibits in front of him.

MR. KELLOGG: Well, the April 8 memo is Exhibit 30, isn't it?

THE WITNESS: Yes, sir.

MS. SPOONER: Yes.

BY MR. KELLOGG:

Q. My question is this 31, which is Mr. Rugh's May 6 memo, that was his comments on Mr. Hannon's Exhibit 30 request, wasn't it?

A. No, sir, it was his technical analysis of that overrun proposal.

Q. Which proposal was made in Mr. Hannon's April 8 letter that is Exhibit 30; isn't that right?

A. Yes, sir.

Q. All right. Now, did you ever have occasion to discuss with Mr. Hannon the particulars of Mr. Rugh's

technical analysis that is contained in this Exhibit 31?

A. I don't recall.

Q. Do you think it's likely that you did?

A. I don't recall.

Q. Did you ever write Mr. Hannon and ask him to address any of these issues that Mr. Rugh had identified here in his memo of May 6?

A. I don't recall.

Q. If you had, you would recall it, wouldn't you?

A. No, sir.

Q. You might have done that, sir?

A. I might have.

Q. But you don't recall doing it?

A. I don't recall, sir.

MS. SPOONER: Can we go off the record for a moment?

MR. KELLOGG: Sure.

MR. KELLOGG: Mark this as Exhibit 35.

(Deposition Exhibit 35 was marked for identification.)

(Recess.)

BY MR. KELLOGG:

Q. I asked the reporter before we recessed to mark as Exhibit 35 a memorandum dated, looks like September 1 of 1983, anyway, September something, 1983, from Mr. Rugh, to you.

(Witness examines document.)

A. Okay, I have scanned it.

BY MR. KELLOGG:

Q. Exhibit 35, is that a copy of a memorandum from Mr. Rugh to you, dated in September of 1983?

A. Yes, sir.

Q. Does that appear to be a follow-up to Mr. Rugh's earlier May 6, 1983, memo to you about the technical analysis of the time sharing costs on INSLAW's contract?

A. It refers to the May 6 memo.

Q. Would it be fair to call this a supplement to his earlier memo, some further thoughts that he's had on the matter, further analysis, if you will?

A. It appears to be that.

Q. Whereas his earlier memo had recommended that what seemed to be a reasonable figure for time sharing costs I believe was \$17,500 a month, in this memo does he not indicate that a reasonable figure would be perhaps 50,000 a

month?

A. I don't recall. Again, I don't want to go into comparison of these technical memoranda, the contents in them, because they were furnished to me for advice and to see whether your numbers are correct, I would have to go back to the other memoranda to see what the 17-5 pertained to.

Q. Do you have any recollection as you sit here that after giving you the first memo, the May 6 memo, which indicated the view as a technical matter that something in the range of \$17,500 a month would be an appropriate cost --

A. For what?

Q. For the time sharing computer center costs.

A. I would have to review it if the 17-5 was set totally, or to what extent it was for time sharing costs.

Q. In any event, no question that Mr. Rugh's earlier memo of May 6 mentioned the figure of \$17,500 a month, does it not?

A. Which page?

Q. Yes, it's in almost the last line of the last page, and it's not in numbers, it's written out -- no, I take that back.

MS. SPOONER: Mr. Kellogg, I think it's on page 3, paragraph numbered 5. I think it may be repeated elsewhere, too.

MR. KELLOGG: Yes, you are right.

BY MR. KELLOGG:

Q. Do you see that there?

A. Yes, sir.

Q. The sum of the four costs described above is \$17,500 a month?

A. Yes, sir.

Q. Let me ask you this, do you recall at any time after May 6, 1983, getting any information from Mr. Rugh either in the form of this memo, Exhibit 35, or any other information from him, revising the figures that he had set forth in his earlier May 6 memo?

A. No, I don't recall.

Q. You have no recollection of his ever giving you any revision of the numbers in that earlier memo?

A. I have no current recollection.

Q. Mr. Videnieks, this time sharing computer center costs dispute, was that ever resolved, sir, before INSLAW went into bankruptcy?

1 A. What do you mean by resolved?

2 Q. Well, was the dispute between the parties,
3 between the government on the one hand and INSLAW on the
4 other, about whether INSLAW's time sharing computer center
5 costs that they claimed, whether those were appropriate and
6 proper or not, was that ever resolved before they went into
7 bankruptcy?

8 A. I issued a final decision. The matters in
9 front of the board, Department of Transportation Board of
10 Contract Appeals.

11 Q. All right.

12 A. When one issues a final decision, it's a final
13 decision.

14 Q. When roughly did you issue a final decision on
15 that issue, do you recall?

16 A. I issued four final decisions under this
17 contract.

18 Q. On this issue, I am talking about.

19 A. This issue may have been contained in several
20 or one or all, I don't remember specifically in which of
21 those final decisions included this specific issue.

22 Q. All right. But it's fair to say, isn't it,

1 that this question, among others, that is, the time sharing
2 computer center cost question, was still the subject of
3 discussions between INSLAW and the department, right up past
4 the time that they filed for bankruptcy; isn't that right?

5 Wasn't Ms. Sposato involved in negotiations
6 that included that issue, among others?

7 A. Yes, but I was not a part of those
8 negotiations, so therefore I am speculating by saying
9 that -- I think she was involved in that.

10 Q. All right.

11 A. But I don't know to what detail, what the
12 issues, specific detailed issues.

13 Q. All right. Did you ever become aware of a
14 meeting on December 22, 1983, attended by Elliott
15 Richardson, Mr. Hamilton, Mr. Sherzer, there may have been
16 somebody else from INSLAW, I don't remember, and Mr. Rooney,
17 who I believe then was the assistant attorney general in
18 charge of the Justice Management Division, in an effort to
19 resolve both the computer time sharing cost issue and a
20 separate issue involving the word processor portion of the
21 contract, the delay and the issues that arose from that, did
22 you ever learn of a meeting of that sort being held on that

1 date?

2 A. I don't remember dates that well.

3 Q. Did you ever hear that such a meeting was held,
4 whatever date it was?

5 A. Again, I cannot be specific with respect to the
6 individuals attending.

7 I do know that Richardson has met more than
8 once with DoJ officials.

9 Q. Did you ever hear of Richardson meeting with
10 Rooney, specifically?

11 A. I was at one of those meetings, Rooney wasn't
12 there. But I really can't comment specifically as to who
13 was where when. I know there were meetings.

14 Q. But my question is, did you ever hear from any
15 source that Elliott Richardson and Mr. Hamilton met with Mr.
16 Rooney regarding those questions, the time sharing question
17 and the word processor question?

18 A. Ever?

19 Q. Yes, ever. Did you ever hear that they met on
20 those issues?

21 A. Again, I cannot answer you with accuracy from
22 my recollection that with respect to the attendees.

1 Q. Specifically all I am concerned about
2 specifically is those three people, Hamilton --

3 A. I do not recollect.

4 Q. All right. In any event, did you have occasion
5 to attend a meeting of the PROMIS oversight committee on
6 December 29, 1983?

7 A. Again, I cannot be specific with respect to
8 dates. I personally have not ever been in front of the
9 oversight committee as in its full capacity, full standing.
10 I may have met with some individuals who serve on that
11 committee individually.

12 Q. All right.

13 A. I have never been called before it.

14 Q. Who of the people on the committee do you
15 recall ever meeting --

16 A. I don't even know who is on it, who was on it.
17 I assume that Bill Tyson may have been on it.

18 Q. Yes, I believe he was.

19 A. And I have met Bill Tyson.

20 Q. I am sure you have met and discussed parts of
21 this with Bill Tyson.

22 A. No, sir.

1 Q. You have not?

2 A. Tyson is a high level government official, and
3 I did not -- he may have called me during the three or
4 four-year period once or twice, but I don't recollect,
5 called me to attend, to come to his office or something
6 where I may have met there with other people. I don't
7 recall meeting with the guy.

8 Q. Did it ever come to your attention from any
9 source of any kind that the PROMIS oversight committee did
10 meet on December 29, 1983, and that at that meeting they
11 determined and directed that proceedings be commenced to
12 terminate the word processing portion of the INSLAW contract
13 for default, did that ever come to your attention?

14 A. No, sir.

15 Q. No one ever told you that the committee had
16 made that decision on that date?

17 A. To the best of my current recollection, no.

18 Q. Well, during this period of, say, the last half
19 of 1983, was it an issue that you were considering, or that
20 ever came up for your consideration, whether or not the word
21 processing part of the INSLAW contract should be terminated
22 either for default or for convenience?

1 A. It may have come under my consideration. I
2 think that is the time period when -- strike that.

3 Q. I take it whatever the time period was, at some
4 point that issue certainly came under your consideration,
5 did it not?

6 A. Yes, because I issued the notice of
7 termination.

8 Q. Eventually, you did issue the notice
9 terminating the word processing portion of the contract for
10 convenience; isn't that correct?

11 A. Yes, sir.

12 Q. Not for default, but for convenience?

13 A. Yes, sir.

14 Q. As a matter of fact, initially you were
15 considering terminating it for default, and then eventually
16 decided to terminate not for default, but for convenience;
17 is that correct?

18 A. Yes, sir.

19 Q. Now, who participated in the decision-making
20 process on that question?

21 A. What question?

22 Q. The question of whether to terminate the word

1 processing portion of the contract and, if so, on what
2 grounds.

3 A. EOUSA and JMD.

4 Q. All right.

5 A. As far as I know.

6 Q. With respect to EOUSA, did Mr. Mike Snyder
7 participate in discussions regarding that?

8 A. With me, yes.

9 Q. Did Mr. Jack Rugh participate in discussions
10 regarding that subject?

11 A. With me, yes.

12 Q. Did Mr. Brewer participate in discussions with
13 you regarding that?

14 A. Yes.

15 Q. And did Mr. Snyder express an opinion as to
16 whether or not he felt that the word processing portion of
17 the contract should be terminated for default?

18 A. I believe he did.

19 Q. And what was that opinion?

20 A. I think -- I think EOUSA submitted a memorandum
21 originally requesting termination for default, but that is
22 the best of my recollection and I think Mike may have been

1 instrumental in preparing that memorandum.

2 Q. All right. Do you recall whether Mr. Brewer
3 approved that memorandum, or was that strictly from Mr.
4 Snyder or Mr. Rugh?

5 A. I don't recall who signed it or what signatures
6 were on it.

7 Q. In any of your discussions that you had on the
8 subject, did Mr. Rugh indicate what his view was about
9 whether there should be termination for default of the word
10 processor part of the contract?

11 A. I don't recall specific discussions with
12 specific individuals.

13 However, Mr. Rugh was aware of the problems in
14 the word processing implementation area.

15 Q. Do you recall what his view was, whether it
16 should be terminated or not?

17 A. Since 20 months into the contract there was not
18 one successful word processing site implementation, I
19 believe that all concerned DoJ officials felt partial
20 termination of the contract was proper.

21 Q. That would include Mr. Brewer, as well as Mr.
22 Rugh?

1 A. I think so, yes.

2 Q. As a matter of fact, it also included other
3 people from the JMD, besides yourself, is that right?

4 A. I believe at that time Bill Snider was still on
5 board. If so, he would have been involved, personnel from
6 his office, my supervision.

7 Q. In any event would it be your recollection that
8 this decision was essentially unanimous amongst all the
9 participants at the department who --

10 A. The decision was mine.

11 Q. Well, I understand it was yours.

12 A. Singular.

13 Q. I understand it was yours to make and you did
14 make it. But were the views of everyone who participated in
15 giving you input on the question, were they essentially
16 unanimous, that this thing should be terminated?

17 A. Terminated.

18 Q. Yes.

19 A. With respect to termination, I don't want to be
20 as specific as unanimous. I don't recall specifically any
21 objections.

22 Q. Do you recall anyone voiceing any objections to

1 terminating on the ground of default, as opposed to
2 convenience?

3 A. I recall receiving an advisory memorandum from
4 counsel.

5 Q. This would be Mr. Bill Snider?

6 A. Yes.

7 Q. All right.

8 A. Discussing the pros and cons. It was a
9 one-page memorandum, I believe, the pros and cons of
10 terminating for default or for convenience.

11 Q. Was that memo, did that weigh in your
12 consideration in deciding to terminate for convenience, as
13 opposed to default, Mr. Snider's memo?

14 A. Yes, sir.

15 Q. You decided to terminate for convenience
16 instead of default?

17 A. Based upon that memorandum and other
18 considerations.

19 Q. All right. But you don't recall anyone else
20 involved in giving you input voiceing the view that
21 termination should be based on convenience, as opposed to
22 default?

1 A. The decision was completely mine. However --
2 since I signed the document. However, management was
3 informed. So -- I received no specific directions to do one
4 or the other to the best of my recollection.

5 However, management was informed and in fact
6 saw the two respective notices of termination, one for D,
7 another for C.

8 (Off-the-record discussion.)

9 THE WITNESS: I would just mention I did
10 prepare a notice of termination for default and notice of
11 termination for convenience, because management expressed
12 interest to see the wording.

13 I don't recall specific direction to proceed
14 one way or another. My action was based primarily on legal
15 advice.

16 BY MR. KELLOGG:

17 Q. I don't want to get into the specifics of it,
18 but do you recall what consideration that it was that caused
19 you finally to determine to terminate for convenience, as
20 opposed to default?

21 MS. SPOONER: At this point on the ground of
22 attorney-client privilege I want to caution the witness not

1 to indicate the contents of the memo from Mr. Snider.

2 MR. KELLOGG: Fair enough.

3 A. If I cannot reveal the contents of that
4 memorandum, I can't answer the question.

5 BY MR. KELLOGG:

6 Q. All right, so that to your --

7 A. Is that memo around here or not?

8 Q. I don't think it was revealed to us as they
9 claim privilege and it may be inappropriate to claim it. In
10 any event, to the best of your recollection, the principal
11 basis for your decision to terminate for convenience, as
12 opposed to default, was the legal advice that you got from
13 Mr. Snider; is that correct?

14 A. Yes.

15 Q. Now, going back to this computer center time
16 sharing cost issue, I recall you testified that after you
17 got Mr. Rugh's original memo on the subject in May of '83,
18 that you asked for some input from audit people, and they
19 eventually gave you some, gave you some recommendations that
20 you eventually followed regarding suspending a part of the
21 payments.

22 Did audit have any further involvement in this

time sharing cost issue, to your recollection?

A. Yes.

Q. Their involvement eventually developed into a full scale audit, didn't it?

A. Audit of what?

Q. The time sharing costs and the facts surrounding that issue.

A. Yes.

Q. As a matter of fact, that audit actually continued clear up until October of 1984, before you finally got an audit report on the subject; isn't that right?

A. I can't be specific with respect to dates.

Q. Well, it was sometime in the fall of '84 when you finally got an audit report, wasn't it?

A. Could I please see it to see if that is true or not?

Q. Before I get to.

MR. KELLOGG: Before I get to that, let me mark this as Exhibit 36, please.

(Deposition Exhibit 36 was marked for identification.)

(Witness examines document.)

1 A. I have read it. we generated it, it is clear in

2 the second BY MR. KELLOGG: it at least this memo is raising

3 Q. Have you ever seen that memo before, Exhibit
4 36?

5 A. I think I have. don't

6 Q. This appears to be a memo dated August 24,
7 1984. It's directed from a Guy Zimmerman, director of the
8 audit staff, to Kamal Rahal, director of the procurement and
9 contract staff

10 Now I take it Mr. Rahal, he was your superior ;
11 is that right? it's asking to know how to treat --

12 A. Yes, sir. contents of the memorandum?

13 Q. The memo refers to the fact that at this be
14 particular time, August of '84, the audit staff is center
15 "currently conducting a total cost audit of INSLAW, Inc.,
16 for the fiscal period October 1, '82, to September 30, '83."

17 Would this appear to be related to the audit
18 that I asked you about earlier that continued into '84?

19 A. Generally, yes. But audit staff is very
20 specific as to what they call a total cost audit, an audit.
21 So I really cannot recollect what generated the total cost
22 audit. know if the 330 rate is a 'provisional rate' or a

Q. Whatever may have generated it, it is clear in the second sentence there that at least this memo is raising a question regarding a computer center cost issue, is it not?

A. Raising a question?

Q. Yes, raising a question.

A. What question is that?

Q. If you will read the second sentence of the memo.

A. It's a statement.

Q. He's asking to know how to treat --

A. Second sentence of the memorandum?

Q. "We will soon be at a point where it will be essential to know how to treat the INSLAW computer center rate."

A. That is a declaratory statement.

Q. All right. But my point is, I guess, that he's talking about issues related to the computer center costs; isn't that right, in this memo?

A. Yes.

Q. He goes on in there to say, "Specifically, we need to know if the SRU rate is a 'provisional rate' or a

1 rate 'fixed with carry forward provision.' If it is
2 provisional, we will treat it in the same manner as the
3 provisional overhead rate. If it is fixed, we cannot
4 retroactively adjust it.

5 "In other words, the 'actual' SRU rate would be
6 a moot point as far as fiscal year '83 is concerned an
7 over/under allocation could only be 'carried forward' to
8 subsequent fiscal years."

9 Now, you say you believe you did get a copy of
10 this memorandum?

11 A. I believe so.

12 Q. Did Mr. Rahal ever ask for any comment or any
13 input in providing a response to this memo?

14 A. From whom?

15 Q. From you.

16 A. Me. I don't recall.

17 Q. Do you recall assisting in preparing any
18 response to this memo?

19 A. Not specifically, no, sir.

20 Q. Now, it would seem to me that the thrust of
21 this first paragraph is that if this SRU for INSLAW had been
22 a fixed with carry forward provision rate, as opposed to a

provisional rate, then he's saying that it cannot be retroactively adjusted.

Do you think that is a fair interpretation of that, as you read it?

A. Which sentence are you talking about?

Q. Well, where he says, after he says, "Specifically we need to know if it is a provisional rate or a rate 'fixed with carry forward provision.'"

He goes on to say, "If it is provisional, we will treat it in the same manner as a provisional overhead rate. If it is fixed, we cannot retroactively adjust it. "

A. You are reading from the memorandum.

Q. Yes. You asked me what sentence I am reading from.

A. We have both read it.

Q. Okay, and my question to you is, am I correct in reading that that he is saying that if the rate is fixed with carry forward provision, it can't be adjusted retroactively?

Is that a fair interpretation of that?

A. I believe you are not interpreting, you are reading what the man wrote, and you appear to be reading it

correctly. to anything else?

A. He may be referring to the (Pause.) of -- as I

testified BY MR. KELLOGG: ent covers provisional rates,

Q. Going back to Exhibit 28, the negotiation agreement, we talked about earlier there on the front page under subparagraph C, under computer center, INSLAW's computer center rate for fiscal year '83 would appear to be labeled fixed with carry forward provision, wouldn't it?

A. Which is fiscal year '83?

Q. 10-1-83 to 9-30-83, the bottom line.

A. The words to the left-hand side of that line read "Fixed with carry forward provision."

Q. All right. Do you have any reason to believe that this term that you just read is not the item that this memo, Exhibit 36, is referring to?

Q. In other words, do you have any reason to believe that Mr. Zimmerman in this memo is referring to anything other than this --

A. I have no reason to believe that he is referring specifically to these words on this page on this particular document, unless you can point it out to me.

Q. Do you have any reason to believe he is

referring to anything else?

A. He may be referring to the concept of -- as I testified earlier, this document covers provisional rates, totally.

Q. All right.

A. As they pertain to my contract.

MR. KELLOGG: Mark this as Exhibit 37.

(Deposition Exhibit 37 was marked for identification.)

BY MR. KELLOGG:

Q. Take a look at that, please, what is marked as Exhibit 37.

(Witness examines document.)

A. I have looked at it.

BY MR. KELLOGG:

Q. Does that Exhibit 37 appear to be a copy of the final audit report regarding the computer center cost issues?

A. No, sir.

Q. Whether it's final or not, does --

A. It's what it says it is in the title, subject area of the memorandum.

1 Q. Well, it is a report to you, isn't it, of an
2 audit of the computer center costs and charging system
3 methodology of INSLAW, Inc., for the fiscal year ending
4 September 30, 1983?

5 A. Yes, sir.

6 Q. All right. And as a matter of fact, this is
7 the audit that was ultimately generated by the questions
8 which arose from INSLAW's notification that the computer
9 center costs were going to be above what was estimated back
10 in April of '83; isn't that right?

11 A. No, sir.

12 Q. What was there that caused this audit to be
13 done other than matters that resulted from INSLAW's April,
14 '83 notification?

15 A. I believe it was an annual report. I believe
16 the audit staff audits contracts, significant contracts by
17 fiscal year.

18 Q. But this isn't an audit --

19 A. I mean the cost reimbursement contracts require
20 audit support and this is typical of audit support.

21 Q. I understand that, sir, but this is not an
22 audit of the whole contract, this is just an audit of the

computer center costs?

A. Yes, sir.

Q. Isn't that right?

A. For that fiscal year.

Q. For that fiscal year. That was the fiscal year that you were concerned with that was brought to your attention in Mr. Hannon's April 8, 1983, letter, wasn't it, fiscal year 1983?

A. The request for recognition of that overrun in Mr. Hannon's letter may have fallen in fiscal year 1983.

Q. All right, and so that this audit, which relates to INSLAW's computer center costs for that fiscal year, that certainly would be an outgrowth of the issue raised by Mr. Hannon's letter; isn't that right?

A. What is unclear to me, and I have not reviewed this report again to refresh my memory, is whether this report is contract-specific or a total cost audit. If you wish, I could take that time to review it.

Q. I don't want you to take, have to read it line by line. If there is someplace quickly that you can look by recollection and see to answer that, yes, go ahead.

(Pause.)

A. Okay, under the scope, section 1 of this audit report, I don't see reference to a contract number. Similarly, I do not see on the first page of the report, reference to any contract number.

When the report speaks to over charge, at this point in time I cannot comment with respect to your questions as to what the over charge pertains to, the contract or all government business or what.

Q. Except that --

A. Without reviewing this thing.

Q. Except that as we said earlier, the negotiation agreement that fixes the SRU rate --

A. Is government-wide.

Q. Is government-wide and would apply to all of INSLAW's contracts, correct?

A. Subject to the applicable regulations and discretionary action by the cognizant contracting officer on each contract.

Q. All right. But to the extent that as a result of Mr. Hannon's letter of April of '83, that raised issues regarding the proper calculation of INSLAW's computer center costs that would inevitably get into questions of the proper

SRU rate, which in turn relates possibly to all of INSLAW's government contracts; isn't that right?

A. I don't want to speculate, sir. I would like to, before I give you answers, I would like to find them in this report.

Q. When you testified that the SRU rate fixed by negotiation agreement would be applicable to all government contracts with INSLAW, subject to applicable regulation and certain discretionary action, do you mean by that, sir, that you would have the discretion to change the SRU rate in a given situation?

A. No, sir.

Q. All right, that answers my question. Well, I want to finish this up.

Is it your testimony that this audit report, Exhibit 37, may be something that resulted from Mr. Hannon's notification back in April of '83, or it may not, you just can't tell?

A. I have received several advisory reports from the audit staff during the administration of the contract that we are discussing. Mr. Hannon's overrun proposal could very well have played a role with respect to this particular

report.

Q. All right, that's fine.

(Pause.)

BY MR. KELLOGG:

Q. Mr. Videnieks, I asked you, I believe, earlier whether or not Ms. Sposato at some point, I believe commencing in 1984 and continuing into the time after INSLAW filed for bankruptcy, whether she had any role in discussions with INSLAW people trying to resolve these various disputes, and I believe you testified you thought that she did, but you weren't personally involved; is that correct?

A. I was not a part of that particular negotiation team. At that time the contract was in litigation, as opposed to administration, and Janice Sposato was, I believe, in charge of the team participating in those litigation or prelitigation, I am really not -- cannot comment on what the nature of those negotiations were, but she was the head of those negotiations.

Q. While she may have been the head of it, your testimony is that you, yourself, were not involved in --

A. As I said, sir, I was not part of that team. I

was called from time to time to provide some information.

Q. All right. In the course of whatever information, if any, you may have learned as a result of the discussions that Ms. Sposato and her team participated in, did it ever come to your attention that Ms. Sposato had learned that, in fact, INSLAW had something like 17 people whose work was actually devoted to the operation of this computer center?

A. I don't specifically recall that number.

Q. Do you ever recall learning that there were a number of INSLAW employees that Ms. Sposato had learned that there were a number of INSLAW employees who actually had worked on the computer center and related services, and that the number was significantly above the three that Mr. Rugh had mentioned in his May, '83, memo? Do you ever remember anybody telling you that?

A. I don't specifically recall now whether anyone told me anything of that sort.

Q. Generally you don't recall ever hearing any such thing as that from anybody?

A. I don't really recall at this point.

Q. Was your advice, your participation, your

input, solicited by anybody on Ms. Sposato's team at various times in these negotiations that she held?

A. My advice, I would say, generally, no, to the best of my recollection.

Q. How about your input?

A. Factual information from the contract file, from time to time, yes.

Q. At some point, I believe Ms. Sposato was involved in making judgments about the government's assertion of a counterclaim in the government contract appeals case in which INSLAW had claimed, I guess it was an appeal from your one or more of your final decisions.

Do you recall any input being sought from you as regards the preparation of a counterclaim in the contract appeals case?

A. I signed the final decisions containing the counterclaim dollar amounts.

Q. Do you recall roughly what those counterclaim dollar amounts were?

A. No, I would have to look at each one of those four final decisions. They covered several cost areas, to see what they were.

Q. But the total counterclaim asserted was anybody substantially more than INSLAW was claiming was owed them by the government, wasn't it?

A. I don't know. ... the final decisions were

Q. It could have been, couldn't it? ... ting

A. Let's look at the decisions. ... I was already in

Q. You don't recall as you sit there whether or not it was more than what INSLAW was claiming? ... 2008A.

A. I don't specifically recall right now. I would like to examine those decisions and see what those specific dollar amounts were before I testify.

Q. All right. In any event, recognizing that you signed them, who prepared the documents asserting the counterclaim that you signed? ... that kind of an answer. There

A. I did. ... that were -- as well as the

Q. In preparing them, did you get any input from Ms. Sposato? ...

A. Very little, if any. ... to the best of my

Q. Did you get any input from anybody in the executive office? ... saying you don't have any specific

A. I received their concurrence but not ... any of necessarily input, because we dealt with historical data.

Q. Do you recall soliciting any input from anybody that was important to you before you made your decision as to asserting the counterclaim?

A. As I stated before, the final decisions were based upon historical data, most of any supporting information or documentation that I needed was already in the contract file, the final decisions, to the best of my knowledge now, were concurred to by counsel and EOUSA.

Q. Do you recall having any discussions with Mr. Rugh about this issue of asserting a counterclaim before you actually did it?

A. Which counterclaim are you talking about?

Q. Any of them.

A. I can't give you that kind of an answer. There were four final points that were -- as well as the counterclaim, that were issued over a period of time, maybe a year, maybe two years.

Again, I am speaking to the best of my recollection with respect to those time periods.

Q. You are saying you don't have any specific recollection of talking to Mr. Rugh about asserting any of those counterclaims?

A. I don't specifically recall that.

Q. Do you ever remember Mr. Rugh advocating that you should file a counterclaim on any of these final decisions?

A. No.

Q. Do you ever remember Mr. Mike Snyder ever advocating or recommending that you should file a counterclaim on any of these final decisions?

A. Not specifically, sir.

MS. SPOONER: Do you really mean to ask this witness if he should file a counterclaim?

MR. KELLOGG: No, I thought my question was does he recall these particular people in the executive office ever advocating to him that he, the contracting officer, should a certain a counterclaim.

MS. SPOONER: In the board proceedings?

MR. KELLOGG: I take it he did it in his final decision or in connection with his final decision.

MS. SPOONER: We just have a terminology problem. But if you mean that he should issue a final decision, is that what I understand your question to be?

MR. KELLOGG: My problem obviously is, I don't

understand the intricacies of the process.

Off the record a minute.

(Off-the-record discussion.)

MR. KELLOGG: Let's go on the record.

BY MR. KELLOGG:

Q. Mr. Videnieks, maybe I have confused the issue here unwittingly. But I thought I recalled you testifying that you, at some point, prepared and signed counterclaims with respect to some or all of the final decisions that you had made in this contract; is that correct?

A. No, it's not correct.

Q. Did I misunderstand you?

A. What's correct is I signed and prepared four final decisions.

Q. All right.

A. In which one or more of those decisions a counterclaim was included in one or more cost categories.

Q. All right. So with respect to that that you just testified you did, my question is, do you recall Mr. Rugh ever advocating or recommending to you that you should include in any of those final decisions a counterclaim on particular cost categories?

A. I don't recall, sir.

Q. Do you recall Mr. Brewer ever advocating or recommending that you should assert a counterclaim in a particular cost category in any of your final decisions?

A. No, sir.

Q. You are pretty sure Mr. Brewer did not recommend that to you or advocate that to you?

A. Pretty sure. I don't think he was involved in the process. He may have been informed about it, but not involved in the process.

Q. In any event as you sit here (Pause.)

BY MR. KELLOGG:

Q. Do you, as you sit here today, recall whether any of your final decisions which contained one of these counterclaims, do you recall whether any of those were asserted and issued after INSLAW filed its bankruptcy petition?

A. I believe one or more of those four final decisions was dated in '86.

Q. All right. And do I recall correctly that there was some testimony either from you or from Mr. Miller of the trustee's office that you had mentioned to Mr. Miller

1 the possibility that the government would a certain a
2 counterclaim on any of these contract issues?

3 A. I don't recall, but you'd have to refresh my
4 memory. I talked with Mr. Miller. I don't recall right now
5 what the discussions -- whether the discussions involved my
6 final decisions or not.

7 Q. Without your deposition transcript in front of
8 me, I can't remember, myself. But in any event --

9 A. I remember questions in that area being asked
10 in the first deposition that was taken from me.

11 Q. In any event as you sit here, you don't recall
12 whether you would have mentioned anything about that to Mr.
13 Miller or not?

14 A. I may have mentioned it, but I can't recall
15 what I mentioned to him.

16 Q. Do you recall at some point in the Sposato
17 negotiations, do you recall learning that Ms. Sposato and
18 the government team had determined to make an offer to
19 INSLAW to settle the whole matter with a payment by INSLAW
20 to the government of \$60,000?

21 Do you recall learning that such an offer was
22 made by Ms. Sposato?

1 A. I recall learning about settlement offers by
2 either side. I don't recall the specifics. There may have
3 been several.

4 Q. That dollar amount does not particularly jump
5 out at me. I am not saying that I did not learn about any
6 offer, but I don't specifically recall.

7 MR. KELLOGG: Mark this as Exhibit 38.

8 Q. Do I (Deposition Exhibit 38 was marked for
9 negotiation team identification.)

0 (Witness examines document.)

1 MS. SPOONER: Do I have a copy of that?

2 MR. KELLOGG: You should.

3 MS. SPOONER: 1985?

4 MR. KELLOGG: Yes, it should be about the last
5 one.

6 MS. SPOONER: I have it. Thank you.

7 A. I have read my memorandum. I notice that you

8 sent a copy BY MR. KELLOGG: Rugh, Mr. Mike Snyder and Mr.

9 Q. Is this a copy of a memo that you wrote to
0 Janice Sposato, dated October 21, 1985?

1 A. Yes, sir.

2 Q. In that memo do you indicate to her that you

1 disagree with the negotiating team's offer that INSLAW pay
2 \$134,526 as the total additional computer center costs?

3 A. That's what the memorandum says I think, yes.

4 Q. Do you indicate that you also disagree with the
5 team's stated overall objective for negotiation of achieving
6 a wash of all claims as against INSLAW's claims?

7 A. That is what the memorandum states.

8 Q. Do I take it correctly that, in your view, the
9 negotiation team should have sought to recover additional
10 monies from INSLAW and they should not have tried to achieve
11 an objective of just walking out with neither side paying
12 the other any money? You disagreed with such an approach?

13 A. I state so in this memorandum that I disagree
14 with such an approach.

15 Q. Well, do you recall taking that position, sir?

16 A. Yes.

17 Q. Before you wrote this memo, I notice that you
18 sent a copy to Mr. Brewer, Mr. Rugh, Mr. Mike Snyder and Mr.
19 Zazzaro.

20 Did you have any discussions with Mr. Brewer
21 about this subject before you wrote the memo, sir?

22 A. I don't specifically recall.

1 Q. Do you think it's likely you had any
2 discussions with him?

3 A. It's more likely that I spoke with Mike Snyder,
4 the audit staff and Jack Rugh on that matter before I would
5 have spoken to Brewer. But I don't rule out the possibility
6 that I spoke with him.

7 Q. All right. Whoever you may have spoken with,
8 do you recall anybody from the executive office expressing
9 any views to you on this issue, that is, whether the
10 negotiation team's positions, whether they agreed or
11 disagreed with the negotiation team's positions?

12 A. I don't recall.

13 Q. Do you think it's possible that Mr. Rugh or Mr.
14 Snyder would have expressed any views to you on this
15 subject, whether they agreed or disagreed?

16 A. It's possible, yes.

17 Q. As you sit here today, do you recall either one
18 of them ever voicing any view on this question to you; do
19 you recall them doing that?

20 A. Who?

21 Q. Either Rugh or Snyder, Mike Snyder.

22 A. Not specifically, no.

1 Q. Do you think it's likely you had any
2 discussions with him?

3 A. It's more likely that I spoke with Mike Snyder,
4 the audit staff and Jack Rugh on that matter before I would
5 have spoken to Brewer. But I don't rule out the possibility
6 that I spoke with him.

7 Q. All right. Whoever you may have spoken with,
8 do you recall anybody from the executive office expressing
9 any views to you on this issue, that is, whether the
0 negotiation team's positions, whether they agreed or
1 disagreed with the negotiation team's positions?

2 A. I don't recall.

3 Q. Do you think it's possible that Mr. Rugh or Mr.
4 Snyder would have expressed any views to you on this
5 subject, whether they agreed or disagreed?

6 A. It's possible, yes.

7 Q. As you sit here today, do you recall either one
8 of them ever voicing any view on this question to you; do
9 you recall them doing that?

0 A. Who?

1 Q. Either Rugh or Snyder, Mike Snyder.

2 A. Not specifically, no.

with him. Q. Do you recall generally anybody from the executive office expressing any view -- receive any contact

at any time. A. To the best of my recollection at this point, I believe I generally discussed this subject with all or some of the people who received copies of this memorandum, as indicated at the bottom. other government agency about this

contract. Q. As you sit here today, you don't have any recollection of any of those people who received copies having expressed opposition to the views that you set forth here in this memo, do you? question is did you ever get

poster. A. No, sir, those are my views, my personal views on the matter as the cognizant contracting officer.

Q. I understand that they are your views, Mr. Videnieks. who?

5 A. But the question I asked you was, do you recall
5 any of the people who were copied on your memo ever
7 expressing any objections to these views in any discussions
8 that you may have had with them? lawyers that essentially

9 A. No, sir, and I don't think they were in a
0 position to. I've appeal, is that --

1 Q. I have got a few, maybe more than a few, kind
2 of a laundry list of things that I want to try to conclude

1 with here.

2 Mr. Videnieks, did you ever receive any contact
3 at any point from the time you started working on this
4 INSLAW, the RFP that preceded this contract, up until today,
5 did you ever receive any contact from anyone outside of the
6 Justice Department in any other government agency about this
7 contract or about INSLAW?

8 A. Was your question, outside, including both
9 government and nongovernment organizations?

10 Q. No. First the question is did you ever get
11 contacted about INSLAW or about this contract by anybody
12 outside the Department of Justice?

13 A. Yes, sir.

14 Q. Who?

15 A. The Department of Transportation Board of
16 Contract Appeals' lawyer to whom I sent -- There were two
17 lawyers who received copies of my -- of the appeal file.

18 Q. But these would be lawyers that essentially
19 would be representing the department's interest in this
20 administrative appeal, is that --

21 A. Yes, sir.

22 Q. Is that correct?

1 I contact personnel in the audit staff, discuss
2 it with them.

3 Q. Do you ask them to perform some type of an
4 audit, or to give some type of analysis on their part to
5 help you make a decision here?

6 A. I don't recall specific events, I can't
7 identify them specifically, what happened after this point.
8 But I do recall that as a result of INSLAW's overrun
9 notification, the government began investigating or
10 analyzing the data center costs.

11 Q. And as you have testified, you contacted the
12 people in audit to get some further assistance on this
13 question; isn't that right?

14 A. Yes.

15 Q. In the course of this process of essentially
16 trying to decide what to do about this question, did you
17 have any discussions with Mr. Brewer?

18 A. I can't remember specific discussions. That
19 does not mean there weren't any.

20 MR. KELLOGG: Mark this as Exhibit 32.

21 (Deposition Exhibit 32 was marked for
22 identification.)

BY MR. KELLOGG:

Q. Take a look at Exhibit 32, please.

Q. (Witness examines document.)

BY MR. KELLOGG:

Q. This appears to be --

A. I am still reading, sir.

Q. Sure.

A. May I finish it, please?

Q. All right, go ahead.

(Pause.)

A. I have read it.

BY MR. KELLOGG:

Q. This appears to be a memo to the file from Mr. Rugh, dated May 18, 1983, reciting a discussion between yourself, Mr. Whiteley, who I take it is an audit person, Al Gibson and himself, regarding the issues raised in his memorandum; is that correct?

A. Yes, sir.

Q. Later on in the memo he recites that his memorandum suggests that a reasonable charge for time sharing should not exceed \$17,500 a month and that the latest voucher contained a monthly charge of \$106,000.

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. It contains a charge of \$64,000 for time sharing.

And it proceeds to indicate in the last paragraph that the group briefed Brick Brewer and Mike Snyder on the issues.

Do you recall this meeting that was described here in this memorandum?

A. The group briefing, or --

Q. No, I am speaking first of the meeting with yourself, Mr. Whiteley, Gibson and Mr. Rugh.

A. Not specifically, no, sir.

Q. Do you recall a briefing by those persons, including yourself, of Mr. Brewer and Mr. Snider on this issue?

A. I don't recall.

MR. KELLOGG: Mark this as Exhibit 33, please.

(Deposition Exhibit 33 was marked for identification.)

(Witness examines document.)

A. This refreshes my memory with respect to

Exhibit 32. I don't recall.

BY MR. KELLOGG: page, about halfway through

Q. Speaking now of 33, does that appear to be a copy of three pages of handwritten notes of a memo you prepared to the file, dated May 18 of '83, regarding a meeting that date, apparently the same meeting referred to in Exhibit 32, Mr. Rugh's memo? says, sir?

A. Yes, sir.

Q. Does that refresh your recollection in terms of whether you or the group in your presence briefed Mr. Brewer about this question? to give this then pending voucher to

A. Yes, sir. his recommendation as to how much

Q. Do you have any present recollection of any particular role that Mr. Brewer played, anything he may have contributed to this matter that was being discussed?

A. No, sir. I take it that your memo would

Q. You don't recall any particular statements about the issue that he made? on May 18, isn't that right?

A. I don't recall. memorandum would appear to say

Q. You don't recall any particular directives that he may have given as to how he wanted this thing to be handled? dation on it?

A. I don't recall.

Q. On the second page, about halfway through there, you have a sentence that begins, it looks like "voucher number 37 in the amount of 265," I believe it is 503 dollars, "was given to R. Whiteley for examination and recommendation of the amount to be withheld."

Is that what that says, sir?

A. Yes, sir.

Q. Would it be fair to conclude that that was at least one of the actions that the assembled group at this meeting took, namely, to give this then pending voucher to Mr. Whiteley and get his recommendation as to how much should be withheld?

A. The memorandum says that the voucher was given to Bob Whiteley. The timing, I can't speculate on.

Q. Well, may I take it that your memo would indicate that the voucher was given to him at or as a consequence of this meeting on May 18; isn't that right?

A. That's what the memorandum would appear to say.

Q. I take it, do you have any recollection of giving him voucher 37 and asking him to make a recommendation on it?

A. No, sir.

Q. In any event I take it there is no question that that in fact did occur?

A. Yes, sir.

Q. And eventually, Mr. Whiteley or someone in his organization made a recommendation to you about that issue, didn't they?

A. Eventually, I think so.

Q. As a matter of fact they recommended that you do withhold significant amounts from that voucher, as well as later vouchers; isn't that right?

A. I think so, yes.

MR. KELLOGG: Mark this as Exhibit 34, please.

(Deposition Exhibit 34 was marked for identification.)

(Witness examines document.)

A. I have read it.

BY MR. KELLOGG:

Q. Is that a copy of a memo that you received from the audit staff, dated May 24, 1983?

A. Yes, sir.

Q. Is this a response to the action that the group

took on the May 18 meeting giving this voucher 37 to Mr. Whiteley in audit to be reviewed and make a recommendation about withholding?

A. I cannot correlate the amounts. The amounts appear to be different in this memorandum than they are in the prior two memos unless there have been additions, so should we work that out?

Q. Well, they appear to be, at least this Exhibit 34 refers, among other things, to voucher number 37, doesn't it?

A. Yes.

Q. That is the same voucher that is referred to in your handwritten notes, isn't it, that you gave to Mr. Whiteley?

A. Yes.

Q. So although I recognize there is --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. As you read the memo, referring now to Exhibit 34, is this a recommendation that 58,198 be withheld from voucher 37?

A. It's a recommendation that I consider

suspension.

Q. But in that amount on that voucher?

A. Yes, sir.

Q. All right. So I guess it's possible that your handwritten memo refers to the total that the voucher is for, 200 and some thousand?

A. I can't comment on it without further analysis.

Q. All right, I am just saying it's possible that the voucher claimed a total amount of well in excess of this and that this memo here, 34, is just speaking to how much they recommend that you consider suspending of the total.

A. I like to be specific with dollar amounts. If we could see the voucher --

Q. Well, I understand, and it's not important, I don't think, for purposes of this question how much the voucher was.

There is no question in your mind this Exhibit 34, whatever amount the voucher was, they are recommending to you that you consider suspending paying \$58,198 on voucher 37; isn't that right?

A. Yes, sir.

Q. It's also clear they are recommending that you

consider suspending paying \$67,168 on voucher 39?

A. Yes, sir.

Q. Now it's also clear, isn't it, that the recommendation that I just recited there, that that is based on the questions raised and the information provided in Mr. Rugh's May 6, 1983, memo?

A. Yes, sir.

Q. When you gave the matter to audit or you made your request to audit that they give you some input on this and make a recommendation, did you give them any other information besides that contained in Mr. Rugh's memo?

A. I don't recall, but there were numerous telephone conversations and meetings, I imagine, concerning this question.

Q. I guess what I should confine my question to is that in terms of a technical analysis about what charges might or might not be appropriate under the contract for the time sharing costs, did you give them any information relating to that other than Mr. Rugh's May 6, '83, memo?

A. I don't recall.

Q. Do you recall having any other information on that technical analysis besides Mr. Rugh's memo?

1 A. I don't recall. There may have been other
2 memoranda in existence.

3 Q. If there were, where would they have likely
4 come from, from whom?

5 A. They could have also come from the office of
6 information technology.

7 Q. Is that someplace that is outside of the
8 executive office of the U.S. attorneys?

9 A. Justice Management Division, I am not sure
whether there were any such memoranda at this time.

Q. Do you recall asking for any input from them on
this question?

A. I don't recall.

Q. In any event, this Exhibit 34 would appear to
indicate that the audit people's recommendation was based
solely on Mr. Rugh's memo; isn't that right?

A. No.

Q. What would cause you to say that the memo,
Exhibit 34, would indicate that they based their
recommendation to you on anything other than Mr. Rugh's
memo?

A. There is nothing in the memorandum to indicate

that. *Recollection is that after you got this Exhibit 34 with the*

Q. *There is nothing in the -- ding, you had further*

A. The original was solely. I don't know whether solely is the right word to use.

Q. All right, but the memo does indicate clearly that this recommendation is based on the information contained and the questions raised in Mr. Rugh's memo?

A. Yes, sir. *specifically recall that.*

Q. It doesn't indicate that it's based on anything else?

A. That's what this particular memo seems to say.

Q. Just tell me what your recollection is, what transpired regarding this time sharing issue after you received this May 24 memo from the audit staff recommending that you consider suspending these specific amounts on these two vouchers? *But you don't recall --*

A. I generally recollect seeking advice of counsel, further discussions with EOUSA personnel, with audit personnel, and then preparing and having reviewed alibi those respective offices which I just mentioned prior to issuance of such suspension letter to the contractor.

Q. So that if I understand you correctly, your

1 recollection is that after you got this Exhibit 34 with the
2 recommendation that you consider suspending, you had further
3 discussions with people in the executive office for U.S.
4 attorneys?

5 A. Yes, sir.

6 Q. Now, in those discussions, did Mr. Rugh
7 participate in those discussions?

8 A. I don't specifically recall that.

9 Q. But I take it it's likely he would have, isn't
10 it?

11 A. Yes, sir.

12 Q. It's also likely that Mr. Brewer would have
13 participated in those discussions?

14 A. To the extent of his availability, yes, sir, if
15 he were there.

16 Q. But you don't recall --

17 A. No, sir.

18 Q. -- him participating?

19 A. No, sir, I don't want to speculate.

20 Q. Generally, what position did Mr. Rugh, I mean
21 what position generally did the executive office take about
22 whether these payments should be suspended?

1 A. Yes, sir.

2 Q. I am not talking about. Apart from those
3 people, did you ever get contacted by anyone else outside
4 the Department of Justice about either INSLAW or this
5 contract?

6 A. A journalist or reporter from a law review
7 magazine requested contract documents under the Freedom of
8 Information Act, I think. I may not have specifically
9 handled that request or I may have. Or I may even be
0 confusing contracts here.

1 Q. Would this be the National Law Journal?

2 A. It could be, it could be. And we processed
3 that request through the freedom of information people.

4 Q. Do you recall getting a specific contact from a
5 reporter about that?

6 A. I may be confusing contracts. It may not be
7 this particular contract. But I think that a --

8 To answer your question, this may have been
9 another situation. But really, without going through, I
0 don't even know whether I have records anymore.

1 Q. Apart from that contact, if that related to
2 this contract, do you recall any other contact by anyone

outside the Department of Justice, either about this contract or about INSLAW?

A. Once I think I received a telephone call from an individual who had questions in a financial area, I think, with this contract. I referred that call to the audit staff.

I don't really remember who the individual was or the nature, more specific nature of the questions, or when it took place, within the year. I can't even pin down the year.

Q. Did this person identify himself?

A. May have. Sure he did, of course.

Q. It was a man?

A. I believe it was a man.

Q. And did he indicate that he was representing INSLAW in any way?

A. No, it was, I believe he did not represent INSLAW but he had a question concerning INSLAW. It was a question completely out of my area.

I don't remember, even though I administered the contract, it was a financially oriented question and I referred the man to the audit staff.

1 Q. Was this the type of question that someone
2 would be asking if they were considering trying to buy
3 either the whole company or some of INSLAW's products?

4 A. Could have been, but I don't recall.

5 Q. Do you remember who in the audit staff that you
6 referred this person to, sir?

7 A. No, sir.

8 Q. Do you recall whether this was before or after
9 INSLAW filed its Chapter 11 petition in bankruptcy?

10 A. I don't recall.

11 Q. Do you think it was during the time that the
12 contract was still in effect, or was it, had it run its
13 course?

14 A. Again, I don't recall.

15 Q. Other than this incident and the reporter, do
16 you recall getting any other contacts from anybody outside
17 the Department of Justice about INSLAW or about the
18 contract?

19 A. I don't recall specifically.

20 Q. Do you think you could have?

21 A. I could have, but I really don't recall.

22 Q. Do you recall ever receiving any contact from

any customers or creditors of INSLAW?

A. I don't recall, the gentleman we referred to a short while ago may have represented either a customer or creditor, but I don't really recall.

Q. I am excluding that call in my question. Do you ever recall getting a call or contact of any kind from anybody at IBM?

A. Not specifically, no.

Q. Do you ever recall getting a contact or telephone call from anybody at AT&T?

A. Not specifically, no.

Q. Do you ever recall getting any contact or telephone call from anybody at Wang?

A. No, sir.

Q. Do you recall ever learning from any source that Mr. Rugh had had any contact from any person outside the Department of Justice regarding INSLAW or the contract?

A. I believe EOUSA at one time or another spoke with a state government, but I don't recall specifics.

Q. How did you learn of that fact?

A. I can't recall.

Q. Do you think it would have been Mr. Rugh or Mr.

Mike Snyder that told you that?

A. I can't recall, sir.

Q. Do you have any recollection as to what time period the contact by the executive office with a state government might have been?

A. No, sir.

Q. Do you think it would have been during the time that the contract was in effect?

A. I don't recall.

Q. Do you remember anything about what information was communicated to the state government?

A. No, sir.

Q. Do you ever recall Mr. Rugh --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Apart from that contact with the state government, if it did occur, did you ever learn from any source that Mr. Rugh had had any contact with anyone else from outside the Department of Justice regarding INSLAW or this contract?

A. During the life of the contract, now my memory -- I, Mike Snyder and Jack Rugh did communicate with

1 respect to contract administration matters, basically
2 government-furnished equipment, with the respective
3 representatives from the hardware contractors.

4 Q. That would be, I believe --

5 A. Schedule -- PRIME and Lanier, basically
6 scheduling deliveries of hardware and this type of thing.

7 Q. Do you ever recall discussing with either PRIME
8 or Lanier personnel anything about INSLAW's performance
9 under the contract?

10 A. Not specifically, no.

11 Q. Do you --

12 A. It may have occurred. The area of scheduling,
13 itself, is related to the performance, performance against
14 time. So in that respect as it pertains to government
15 delivery of government-furnished equipment and schedules
16 contained in the respective three contracts and how they
17 interrelate, that is a performance related area.

18 Q. Did you ever learn from any source that Mr.
19 Brewer had any contact either with PRIME or with Lanier on
20 this, about the contract or about INSLAW?

21 A. The team of cognizant personnel, including me,
22 Mike Snyder, at one time, Carol Sloan, we dealt with the

1 contractor representatives from the particular contracts
2 involved and administered those contracts. At times there
3 were overlapping areas in those contracts.

4 Q. Well, my question is, do you know or did you
5 ever learn from any source that Mr. Brewer had any contact
6 with anybody from either PRIME or Lanier about INSLAW?

7 A. I have seen people from PRIME and Lanier meet
8 with Mr. Brewer on business matters.

9 Q. Related to INSLAW?

10 A. No, I don't know what they talked about.

11 Q. Did you ever learn from any source that Mr.
12 Brewer had ever made any statements critical of INSLAW to
13 anyone outside the Department of Justice?

14 A. No, sir.

15 Q. Did you ever learn that Mr. Rugh had ever made
16 any statements critical of INSLAW to anyone outside the
17 Department of Justice?

18 A. No, sir.

19 Q. Did you ever learn from any source that Mr.
20 Mike Snyder had made any statements critical of INSLAW to
21 anyone outside the Department of Justice?

22 A. No, sir.

MR. KELLOGG: Let's take about five minutes.

(Recess.)

MR. KELLOGG: Would you mark this as Exhibit 39, please.

A. Review (Deposition Exhibit 39 was marked for support claim of identification.)

Q. Enhancements (Witness examines document.)

A. BY MR. KELLOGG:

Q. Looking at Exhibit 39, Mr. Videnieks, speaking about the first page of it, this appears to be a copy of handwritten notes that you made on 5-9-83; is that correct?

A. Yes.

Q. I would like you if you would for the record to just read what you wrote there, starting with the date?

A. 5-9-83. Tell econ JR/MS/PV --

Q. Excuse me, just let me interject a second, if I could.

Where you have abbreviations in your memo, if you can recall now what they mean, if you would just state what they mean from your recollection, I would appreciate it.

A. Telephone conversation, Jack Rugh, slash, Mike

Snyder, slash, Pete Videnieks, regarding Harvey Sherzer's letter of 5-4-83. PROMIS software data rights. J R has revised -- I mean, Jack Rugh has revised letter --

Q. Do you think it could be reviewed letter?

A. Reviewed letter and feels contractor can't support claim of privately financed enhancements.

Q. Enhancement development, maybe?

A. Enhancement development. Jack Rugh has memo drafted evaluating letter. It will include three alternatives for discussion with Bill Snider.

1. Flat out denial of contractor's proposed method and government decision that contractor has failed to substantiate (Jack Rugh; --

Q. Does it say drastic, do you think?

A. Drastic)

2. Response that method is not acceptable and suggest acceptable method.

3. Response that contractor has not substantiated claim and ask them to substantiate-however they wish, i.e., don't agree to any method. We all were of the opinion that the government should not get locked into agreement as to how INSLAW proves their claim. Since they

made the claim, proof should be readily available.

Jack Rugh's memorandum will be done Wednesday and he will be back Friday. (-- looks like A L S. I don't know what that means.

Q. Doesn't it say B B, Brick Brewer?

A. I was looking at A L S, before that.

Q. Also.

A. Also B B, that would be Brick Brewer, has written letter regarding copyright; looks like -- looks like, my words, looks like Lanier, doesn't make any sense but that is what it looks like.

Q. Then is that your initial down at the bottom of the page?

A. Yes.

Q. All right.

A. I am not sure that word Lanier, I don't know what -- It could be Lanier; it could not be Lanier.

Q. I take it that it the memorandum you made of the telephone conversation between yourself, Mike Snyder and Mr. Rugh on May 9, 1983?

A. Yes, sir.

Q. Is it fair to conclude from that that your memo

1 indicates that Mr. Rugh was indicating that there were three
2 alternative possible responses to INSLAW's proposed
3 methodology for proving the privately financed enhancements;
4 is that correct?

A. No.

Q. Does your memo indicate that his memo would
include three alternatives for discussion with Mr. Snider,
Mr. Bill Snider?

A. Yes.

Q. One of those alternatives that was going to be
in his memo for discussion with Mr. Snider was a response
that the proposed method was not accepted able and to
suggest an acceptable method; isn't that right?

A. That is what the memorandum says.

Q. Do you recall Mr. Rugh suggesting in this
telephone call or mentioning in this telephone call what an
acceptable method would be?

A. I don't recall, no, sir.

Q. But it's fair to conclude from this memo, isn't
it, that he thought he would be able to put together an
acceptable method?

A. No.

Q. That is not fair to conclude, sir?

A. Let's read it again, sir. Response that method is not acceptable and suggest acceptable method. If there is one. We planned to plan a meeting to discuss approaches not necessarily limited to these three. I don't recall the specific meeting.

Q. All right. But at the very least, at this point your memo would indicate that Mr. Rugh thought that it was at least possible that he could suggest an acceptable method at that time whether eventually he was able to do that or not?

A. No, sir, that is not what I read from that note. Explore.

Q. Where does it say explore?

A. Where does it say possible?

Q. It says one of the alternatives is suggest an acceptable method, right?

Reject the one they proposed and suggest an acceptable method. That is one of the alternatives he is going to lay out in his --

A. On the table for exploration.

Q. On the table for discussion.

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A. As to feasibility.

Q. All right. Presumably he must have thought that he could suggest an acceptable method or he wouldn't have put that out as a possible alternative at that time, would he?

A. No.

Q. All right.

(Pause.)

MR. KELLOGG: Mark this as Exhibit 40.

(Deposition Exhibit 40 was marked for identification.)

(Witness examines document.)

A. I have read it.

BY MR. KELLOGG:

Q. Mr. Videnieks, does that appear to be a copy of a memorandum dated in September of '83 from Mr. Zazzaro of the audit staff to you about this computer center time sharing issue?

A. Regarding the computer center cost allowability issue as it pertains to the contract in question.

Q. This was, again, arising out of the issue that Mr. Rugh had addressed in his May 6, '83 memo, and again I

1 believe in a supplemental memo in September of '83; isn't
2 that right?

3 A. I would have to examine those memoranda to
4 agree with the dates you mentioned.

5 Q. In any event, down in the first page there
6 towards the bottom, Mr. Zazzaro makes a statement that it
7 had been recommended that \$50,000 a month be allowed for
8 computer center time sharing costs, and he goes on to make
9 the statement that there may be costs above the 50,000 that
10 represent legitimate government obligations.

11 This is still on the first page and I'm
12 paraphrasing. I don't have it in front of me.

13 Do you see what I am referring to there?

14 A. Yes, sir.

15 Q. Can you just read his words there when he talks
16 about there may be something in excess of 50,000?

17 MS. SPOONER: Starting with the "accordingly"?

18 BY MR. KELLOGG:

19 Q. Yes.

20 A. "Accordingly, recommend that allowable billings
21 for time share services should be limited to \$50,000 per
22 month.

"However, he offered that time share billings in excess of \$50,000 a month may include bona fide obligations of the federal government."

Q. Do you recall this meeting that this memorandum speaks about here?

A. Vaguely.

Q. Do you recall Mr. Zazzaro raising a question about the fact that allowing \$50,000 a month, that there might be some government obligation legitimately above that amount, do you remember him expressing that view?

A. I don't, because aren't these Jack Rugh's words?

Q. In other words, you think this is Zazzaro saying that Rugh is saying --

A. I think so, from the appearance of the memorandum, that could be the case.

Q. About that time did you suspend payments above \$50,000 a month on the basis of this meeting and other meetings that you had?

A. I don't recall, sir. Each voucher received specific attention, each voucher is specifically annotated, reflecting the amount withheld or suspended or actually

subtracted from the amount billed. It was done on a voucher by voucher basis.

Q. Do you recall as you sit there ever withholding an amount --

MR. KELLOGG: Strike that.

BY MR. KELLOGG:

Q. Do you ever recall suspending payment of all amounts in excess of \$50,000 for computer time sharing costs on any particular voucher?

A. I would have to examine the specific vouchers. The amounts suspended in some cases were above \$50,000.

Q. Maybe I didn't ask my question right, but as I read this memo, what this memo is saying, there was a recommendation to allow 50,000 a month for this cost and to suspend paying anything in addition to 50,000, anything above 50,000 a month. Is that correct --

A. I don't think that is what this memorandum, which -- I won't continue with that sentence.

Q. I don't think that is what this memorandum says on page 2.

Q. How do you read it?

A. I will read it. "The PRIME individuals at the

September 9 meeting agreed to support the COTR's recommendation regarding the \$50,000 monthly amount and invoke the contractual 60/40 relationship to the excess over \$50,000 monthly to protect the government's 60 percent share of any overrun."

Q. So you would read that as being a recommendation that there be a suspension of payments beyond a level above 50,000?

A. Do you want me to read it again?

Q. No, I know what the words say, but you were at the meeting, I take it, and you know the issue and I don't.

A. The issue is accurately reflected here in that sentence which I just read.

Q. I understand that they are saying --

A. I can't say anything more than is written there.

Q. It's because you have no recollection --

A. No, I understand it and I cannot expand on it.

Q. Do you recall that particular meeting and what was decided there?

A. As I stated earlier, I generally recall it.

Q. Do you recall taking any action with respect to

suspending computer center costs -- way or the other?

A. As I just stated I took action -- the acronym.

Q. Let me finish my question. It may be that I'm not fully stated, but I don't

A. I took action on each voucher individually and know that this system with this suspended the required amounts. that this system with this

Q. Do you read this memo, Exhibit 40, I believe it is, as recommending a particular suspension only with respect to specific, certain specific vouchers? acronymed

A. I read that memo as recommending a rationale for suspension of computer center costs from cost reimbursement vouchers at some given period of time. version

Q. Do you ever recall making decisions to suspend parts of particular requested amounts for computer center costs based on this rationale recommended in the memo? under

A. Yes, but I don't recall how many vouchers.

Q. All right. Have you ever heard of a case tracking system, the acronym for which is USACTS?

A. Yes, but that is about as much as I know about it. BY MR. KELLOGG:

Q. Do you understand it to be a case tracking system that works on word processing machines? the word

A. No. It could very well. and the number of

Q. You just don't know one way or the other?

A. I am not familiar. I have heard the acronym. It may very well be word processing orientated, but I don't know that much about it.

Q. Did you ever hear that this system with this acronym had been utilized by any of the U.S. attorneys offices?

A. I believe it was utilized in the field.

Q. Did you ever hear that in substance this case tracking system with that acronym was in reality a version of the word processing software that INSLAW had developed under the EOUSA pilot contract?

A. I don't recollect.

Q. You never recall hearing that?

A. I don't recall hearing that.

MS. SPOONER: Excuse me. May I hear the witness's second to last answer?

(The reporter read as directed.)

BY MR. KELLOGG:

Q. Mr. Videnieks, in February, 1984, INSLAW submitted a proposal after the termination of the word processing part of the contract to expand the number of

computer based sites from what was in the existing contract at the time.

Q. Do you recall that proposal?

A. To who did they submit it to?

Q. To you?

A. To me? I receive -- I recollect having received one or more unsolicited proposals.

Q. Well, this --

A. This may have been one.

Q. This proposal, I do believe, was referred to within the government generally as "an unsolicited proposal."

A. Now, ultimately, I believe you rejected this proposal; is that correct?

A. I'd like to see my letter to see whether I did or not.

Q. I don't have it in front of me. Do you recall?

A. I think I may have rejected it.

Q. All right. Assuming that you did reject it, do you recall any discussions with Mr. Brewer on that subject as to whether you should reject it or what his views were about it?

A. I don't recall discussions with him specifically, but I do recall exchanging memoranda with him.

Q. All right.

A. Asking the EOUSA to evaluate this proposal, and I recall receiving a written evaluation of that proposal. And based upon that evaluation, I issued my rejection notice.

Q. Is it fair to conclude from that that the EOUSA evaluation memo was negative on this proposal?

A. No.

Q. Did the EOUSA memorandum of evaluation recommend that you accept this proposal?

A. No.

Q. Did they recommend that you reject it?

A. I think they recommended that I reject it.

Q. Did you ever learn that that particular proposal was submitted as a result of a specific suggestion of the then deputy attorney general, Lowell Jensen, made to Donald Sandrelli, an INSLAW attorney at the time?

A. No, sir.

Q. Did you ever hear Mr. Jensen had told Mr. Sandrelli that he would look with favor on finding funds for

such a proposal?

A. No, sir.

Q. Did you ever hear that Mr. Jensen told Mr. Sandrelli that he, Mr. Jensen, did not hold INSLAW responsible or he did not think they were at fault for the failure of the word processing portion of the contract?

A. I don't recall, sir.

Q. You would recall if you had ever heard that, wouldn't you?

A. It's possible.

Q. But you don't recall hearing that?

A. No, sir.

Q. Did you ever attend any meetings or briefings regarding PROMIS or INSLAW where Mr. Jensen was present?

A. No, sir, I don't recall.

Q. Did Mr. Brewer or any other department officials mention, in your presence, anything about any meetings that they may have had with Mr. Jensen about PROMIS or about INSLAW?

A. They may have, I don't recall specifically anyone mentioning meetings.

Q. If anyone had, do you think it would be someone

in the executive office?

A. Either the executive office or JMD. Those are the two primary groups of people I dealt with.

Q. Did you ever receive any commendations, awards or bonuses for performance during your service as the contracting officer on the INSLAW contract?

A. General bonuses, the federal government has what's called a -- it's a merit system of sorts. If one gets a certain rating there is a cash award or a cash bonus, I guess private industry would refer to it as. And I think every year I have been there I received something.

Q. Is this what is described as the Senior Executive Service, sir?

A. I wish I were. The answer is no. I was -- no, sir.

Q. Do you recall in rough terms the amounts of any bonuses that you got during these years?

A. There are five levels of rating, or maybe four, and I received always the -- I think the first year I got the outstanding, the years after that it was one level before that and the amounts varied somewhere, I think this last year was like 1500 bucks.

See, I get confused what the percentage increase when they passed this general government -- it's somewhere in the area of a thousand dollars or less, something like that.

Q. Did you ever learn that Mr. Brewer ever got any cash bonuses or awards or commendations during the pendency of the INSLAW contract?

A. I very generally recollect that at one time in one year he was rated high, and may have received some award.

But I don't know, that is about all I know about it.

Q. Did Mr. Brewer ever tell you he had gotten any such award?

A. No.

Q. Did you ever hear that Mr. Rugh ever got any commendations or awards or cash bonuses, anything like that during the --

A. Not specifically, but I do know that Jack may have been rated outstanding one or more times during these years.

Q. It would have been Mr. Brewer primarily that

was doing the rating on him, wasn't it?

A. Mr. Brewer would have been the rating official, yes.

Q. How about Mr. Mike Snyder, did you ever hear that he got any awards or cash bonuses?

A. No, sir.

Q. Or commendations or anything during this period?

A. No, sir.

Q. How about Carol Sloan?

A. I did not hear anything about her.

Q. Now, did you ever receive any contact with anyone from a company called SCT, Systems and Computer Technology, regarding INSLAW?

A. I don't recollect.

Q. Do you ever recall hearing that Mr. Brewer or Mr. Rugh ever received any contact or had any contact with anybody from that company?

A. I don't recollect.

Q. Did you ever have any contact with any person from PRC, Planning Research Corporation, about INSLAW?

A. I don't recall.

Q. Do you think you may have?

A. As I mentioned earlier, I received a call, I believe I testified, from an individual from outside the government. I am not excluding --

Q. All right.

A. -- anybody, any organization from being the source.

Q. Excluding that person, and I know you can't recall now what organization, if any, that person was from, but excluding that person who contacted you, do you have any other recollection of any contact either with anybody from Systems and Computer Technology, or anybody from Planning Research Corporation about INSLAW?

A. I am familiar with the second company by name, and I have dealt with them in the past with another -- within other agencies, but I don't recall.

Q. Do you ever recall any contact with a man by the name of Bruce Adams, I believe he is from California, about INSLAW.

A. Unless he is the reporter or the other individual, I don't -- the name does not ring a bell, let's put it that way.

1 MR. KELLOGG: Mr. Videnieks, that is all the
2 questions that I have got.

3 MS. SPOONER: I have no questions.

4 (Whereupon, the deposition was concluded at

5 5:08 p.m.)
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